

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE:

AMTROL HOLDINGS, INC., *et al.*,
Debtors.

Bankruptcy Case No. 06-11446

NEW ENGLAND GAS COMPANY, *et al.*,
Appellants,

Civil Action No. 07-75-GMS

AMTROL HOLDINGS, INC., *et al.*,
Appellees.

APPENDIX IN SUPPORT OF OPENING BRIEF

Dated; May 14, 2007

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
AMTROL HOLDINGS, INC., <i>et al.</i> ¹	:	Case No. 06-_____ ()
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	

**MOTION OF THE DEBTORS FOR A BRIDGE ORDER AND A FINAL ORDER
(I) PROHIBITING UTILITY COMPANIES FROM DISCONTINUING,
ALTERING OR REFUSING SERVICE, (II) ESTABLISHING PROCEDURES
FOR PROVIDING DEPOSITS TO REQUESTING UTILITIES, (III) DEEMING
UTILITY COMPANIES TO HAVE ADEQUATE ASSURANCE OF PAYMENT,
AND (IV) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS
FOR ADDITIONAL ASSURANCE PURSUANT TO 11 U.S.C. §§ 105(a) & 366**

The above-captioned debtors and debtors-in-possession (each a “Debtor” and collectively, the “Debtors”) hereby move this Court (the “Motion”) for entry of (i) a bridge order (the “Bridge Order”) and (ii) a final order (the “Final Order”), pursuant to sections 105(a) and 366 of title 11 of the United States Code (the “Bankruptcy Code”): (a) prohibiting their utility companies (the “Utility Companies”) from discontinuing, altering or refusing service to the Debtors except as set forth herein, (b) establishing procedures whereby the Debtors will provide a Deposit (as defined below) to Requesting Utilities (as defined below), (c) deeming the Utility Companies to have received adequate assurance of payment, and (d) establishing procedures for resolving requests for additional assurance of payment. In further support of the Motion, the Debtors respectfully state as follows:

¹ Additional debtors include all of Amtrol Holdings, Inc.’s wholly-owned domestic subsidiaries: Amtrol Inc.; Water Soft Inc.; and Amtrol International Investments Inc.

STATUS OF THE CASE AND JURISDICTION

1. On December 18, 2006 (the **"Petition Date"**), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On the Petition Date, the Debtors also jointly filed motions or applications seeking certain typical "first day" orders, including an order to have these cases jointly administered.

2. The Debtors continue in possession of their respective properties and continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner and no official committee has yet been established in these cases.

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are sections 105(a) and 366 of the Bankruptcy Code.

BACKGROUND OF THE DEBTORS

5. Amtrol Holdings, Inc. (**"Holdings"**), together with its subsidiaries (**"Amtrol"** or the **"Company"**), is a leading international designer, manufacturer and marketer of expansion and pressure control products used in water systems applications and selected sectors of the heating, ventilation and air conditioning market. The Company's principal products include well water accumulators, hot water expansion controls, water treatment products, indirect-fired water heaters and returnable and non-returnable pressure-rated cylinders used primarily to store, transport and dispense refrigerant, heating and cooking gases. Many of these products are based on a

technology originated and developed by the Company, involving a pre-pressurized vessel with an internal diaphragm to handle fluids under pressure².

RELIEF REQUESTED

6. By this Motion, the Debtors seek entry of (i) a Bridge Order, in the form of Exhibit A attached hereto, and (ii) a Final Order, in the form of Exhibit B attached hereto, pursuant to sections 105(a) and 366 of the Bankruptcy Code (a) prohibiting the Utility Companies from discontinuing, altering or refusing service to the Debtors except as set forth herein, (b) establishing procedures whereby the Debtors will provide a Deposit (as defined below) to Requesting Utilities (as defined below), (c) deeming the Utility Companies to have received adequate assurance of payment, and (d) establishing procedures for resolving requests for additional assurance of payment.

7. In the operation of their manufacturing, distribution and office facilities, the Debtors incur utility expenses in the ordinary course of business for, among other things, water, sewer services, electricity, gas, local telephone service, and waste disposal. On an annual basis, the Debtors spend approximately \$3.8 million for various utility services, with an average monthly cost of approximately \$320,000. Approximately 27 Utility Companies in the United States provide these utility services. A non-exhaustive list of these Utility Companies is attached hereto as Exhibit C³.

ADEQUATE ASSURANCE OF PAYMENT

8. Section 366(a) of the Bankruptcy Code prohibits utilities from altering, refusing, or discontinuing service to a debtor for the first thirty (30) days of a bankruptcy

² A more detailed overview of the Company is set forth in the Affidavit of Larry T. Guillemette in Support of First Day Motions (the "**Guillemette Affidavit**") filed contemporaneously herewith.

³ Inclusion on the list is not an admission by the Debtors that a particular entity is a utility.

case (the **"Utilities Stay Period"**). Upon expiration of the Utilities Stay Period, however, section 366(b) of the Bankruptcy Code provides that a utility company may (but need not) terminate services if a debtor has not provided such utility with adequate assurance of payment.⁴

9. Prior to the Petition Date, the Debtors were current in the payment of invoices they received from the Utility Companies. In addition to this assurance of payment, and in accordance with section 366(c)(1)(A), the Debtors propose to provide additional assurance of payment as set forth herein. Specifically, the Debtors shall provide to all Utility Companies that send an Additional Payment Request (as defined below) to the Debtors in the manner set forth below (the **"Requesting Utilities"**), within ten (10) business days of receiving such Additional Payment Request, a deposit (each such payment a **"Deposit"**) in an amount equal to the average cost to the Debtors of two (2) weeks of service from such Requesting Utility over the twelve (12) months preceding the Petition Date provided that such Requesting Utility does not already hold a deposit equal to or greater than two (2) weeks of utility services, and provided further that such utility is not currently paid in advance for its services.⁵ Utility Companies that receive a Deposit pursuant to the procedures set forth herein shall be collectively referred to as the **"Advance Payment Utility Companies."**

10. If a Utility Company requires a Deposit, it must send a written notice of such request (each an **"Additional Payment Request"**) to the Debtors, with a copy to

⁴ Section 366(c)(1)(A) provides that the term "adequate assurance of payment" means (i) a cash deposit; (ii) a letter of credit; (iii) a certificate of deposit; (iv) a surety bond; (v) a prepayment of utility consumption; or (vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.

⁵ In the event that a Utility Company sends the Debtors an Additional Payment Request prior to the entry of this Final Order approving the procedures described herein, the Debtors shall have until the entry of the Final Order to comply with such Additional Payment Request.

undersigned counsel, counsel to the DIP Lenders, counsel to any official committee of unsecured creditors formed in this case (the **"Committee"**) and the office of the United States Trustee within twenty (20) days of the entry of a Final Order of this Court approving the procedures described herein (the **"Additional Payment Request Deadline"**). If a Utility Company fails to send an Additional Payment Request by the Additional Payment Request Deadline, such Utility Company shall have waived its right to request any Deposit from the Debtors and shall be deemed to have received adequate assurance of payment in accordance with section 366(c)(1)(A)(vi) (Utility Companies that do not send Additional Payment Request to the parties set forth above by the Additional Payment Request Deadline shall be collectively referred to herein as the **"Consenting Utility Companies"**).

11. Finally, in accordance with section 366(c)(2) of the Bankruptcy Code, all Utility Companies shall be authorized to assert that the treatment afforded pursuant to the procedures set forth herein does not constitute satisfactory adequate assurance of payment (each an **"Additional Assurance Appeal"**). Additional Assurance Appeals may be filed with the Court at any time after a Utility Company becomes an Advance Payment Utility Company or Consenting Utility Company and must (i) be in writing, (ii) set forth the location for which utility services are provided, (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits or other pre-payments or assurances previously provided by the Debtors, (iv) describe in sufficient detail the reason(s) why the treatment afforded pursuant to the procedures set forth herein does not constitute satisfactory adequate assurance of payment, (v) include a proposal for what would constitute adequate assurance from the

Debtors, along with an explanation of why such proposal is reasonable, and (vi) be served upon the Debtors, with a copy to undersigned counsel to the Debtors, the United States Trustee, counsel to any committee formed in these cases and all parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002.

12. If a Utility Company timely files an Additional Assurance Appeal and the Debtors believe that the treatment requested therein is reasonable, or if the Debtors otherwise reach agreement with such Utility Company on an acceptable form of adequate assurance, the Debtors shall be entitled to comply with such request or otherwise provide additional assurance, and shall be authorized to generally compromise or comply with the requests made in Additional Assurance Appeals, without further notice or order of the Court; provided, however, that the Debtors may not provide additional adequate assurance to a Utility Company either (i) in the amount requested by such Utility Company in its Additional Assurance Appeal or (ii) in an amount agreed to by the Debtors and such Utility Company, without the consent of the DIP Lender, in its sole discretion.

13. Where a Utility Company files an Additional Assurance Appeal and the Debtors are unable to reach a compromise, a hearing to determine whether additional assurance is necessary (a **"Determination Hearing"**) will be held on either (i) the Debtor's next omnibus hearing date if the Adequate Assurance Appeal is filed on or before the date that is fifteen (15) days prior to such omnibus hearing or (ii) the following omnibus hearing date if the Additional Assurance Appeal is filed thereafter. Pursuant to sections 366(c)(3) and 105(a), all Utility Companies shall be barred from

altering, refusing, discontinuing service to, or discriminating against the Debtors until, after a Determination Hearing, the Court issues a final order authorizing such action.

14. Other than as set forth herein, the Debtors submit that no additional adequate assurance of payment for post-petition utility services is warranted.

15. Accordingly, the Debtors hereby seek entry of a (i) Bridge Order and (ii) Final Order providing, among other things, that:

- a. Other than as set forth herein, each Utility Company is prohibited from discontinuing, altering, refusing service to, or discriminating against the Debtors until, after a Determination Hearing, the Court issues a final order authorizing such action;
- b. Other than pursuant to the procedures set forth herein, the Utility Companies are prohibited from requiring additional adequate assurance of payment from the Debtors whether in connection with any unpaid pre-petition charges or otherwise;
- c. The Debtors will serve this Motion on the Utility Companies within five (5) business days after the entry of the Bridge Order granting the relief requested herein;
- d. Utility Companies shall have twenty (20) days from the date of entry of a Final Order of this Court approving the procedures described herein to send an Additional Payment Request to the Debtors as set forth herein;
- e. The Debtors shall have ten (10) days to comply with each such Additional Payment Request by providing the Requesting Utilities with a deposit in an amount equal to the average cost to the Debtors of two (2) weeks of service from such Requesting Utility over the twelve (12) months preceding the Petition Date;⁶
- f. Utility Companies that do not file an Additional Payment Request by the Additional Payment Request Deadline shall be deemed to

⁶ In the event that a Utility Company sends the Debtors an Additional Payment request prior to the entry of a Final Order of this court approving the procedures described herein, the Debtors shall have until the entry of the Final Order to comply with such Additional Payment Request.

have received satisfactory adequate assurance of payment in accordance with section 366(c)(1)(A)(vi);⁷

- g. If a Utility Company does not believe that it has received satisfactory adequate assurance of payment, regardless of whether it has received a Deposit pursuant to the procedures set forth herein, it may file an Additional Assurance Appeal pursuant to the procedures set forth herein;
- h. The Debtors shall be entitled to comply with or compromise Additional Assurance Appeals in their sole discretion and without further notice or order of the Court;
- i. Where a Utility Company files an Additional Assurance Appeal and the Debtors are unable to reach a compromise, a Determination Hearing will be held on either (i) the Debtor's next omnibus hearing date of the Additional Assurance Appeal is filed on or before the date that is fifteen (15) days prior to such omnibus hearing or (ii) the following omnibus hearing date if the Additional Assurance Appeal is filed thereafter; and
- j. Any Deposit or assurance of payment provided by the Debtors to a Requesting Utility will, to the extent not used by the Utility Company to satisfy a post-petition default, be returned to the Debtors within thirty (30) days after the earlier of: (i) the consummation of a sale of substantially all of the Debtors assets pursuant to section 363 of the Bankruptcy Code; or (ii) the effective date of a plan of reorganization or liquidation in these Chapter 11 cases without further order of the Court, or otherwise as ordered by the Court.

BASIS FOR RELIEF

16. This Court has the authority to grant the relief requested herein pursuant to sections 105(a) and 366 of the Bankruptcy Code. Section 366 of the Bankruptcy Code is designed to protect debtors from utility service cutoffs, while also providing utility companies with adequate assurance that debtors will be able to pay for post-petition services. See H.R. Rep. No. 95-595, at 350 (1978), as reprinted in 1978 U.S.C.C.A.N.

⁷ For those Utility Companies that are subsequently added to Exhibit C, the Debtors shall serve a copy of the Order on such Utility Companies, along with an amended Exhibit C, and such subsequently added entities shall have twenty (20) days from service of the Order to make an Additional Payment Request.

5963, 6306. In addition, section 105(a) of the Bankruptcy Code provides that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” The purpose of section 105(a) is “to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy ¶ 105.01, at 105-6 (15th ed. Rev. 2004).

17. The Debtors submit that the Court should use its section 105(a) powers in these Chapter 11 cases because the relief requested herein is necessary to continue the Debtors’ normal business operations and to preserve the Debtors’ ability to effectuate an orderly restructuring of their businesses. The relief requested herein is necessary because the Debtors could face a severe cash drain if the Utility Companies condition the provision of post-petition services to the Debtors upon the payment of exorbitantly burdensome and/or unreasonable deposits or other forms of adequate assurance.

18. As set forth above, section 366(c)(1)(A) of the Bankruptcy Code, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, now provides that “adequate assurance of payment” means (i) a cash deposit; (ii) a letter of credit; (iii) a certificate of deposit; (iv) a surety bond; (v) a prepayment of utility consumption; or (vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee. Accordingly, while the statute now specifies the *form* of assurance that will be deemed to be adequate, it leaves the question of the *amount* of assurance that must be provided squarely within this Court’s discretion.

19. Leaving the determination as to the amount of assurance that a Debtor will need to provide in the discretion of the Court conforms with the pre-amendment caselaw, under which courts generally looked to the facts and circumstances of each

case to ensure that utility companies were not subjected to an unreasonable risk of nonpayment for post-petition services. See, e.g., In re Keydata Corp., 12 B.R. 156, 158 (1st Cir. BAP 1981). Courts construing section 366(b) of the Bankruptcy Code have long recognized that adequate assurance of payment does not constitute an absolute guaranty of the debtor's ability to pay. See e.g., In re Caldor, Inc. NY, 199 B.R. 1, 3 (S.D.N.Y. 1996) ("Section 366(b) requires [a] [b]ankruptcy [c]ourt to determine whether the circumstances are sufficient to provide a utility with 'adequate assurance' of payment. The statute does not require an 'absolute guaranty of payment.'" (citation omitted); In re Penn Jersey Corp., 72 B.R. 981, 982 (Bankr. E.D.Pa. 1987) (stating that section 366(b) "contemplates that a utility receive only such assurance of payment as is sufficient to protect its interests given the facts of the debtor's financial circumstances...").

20. Further, courts have recognized that, in determining what constitutes "adequate" assurance, a bankruptcy court must "focus upon the need of the utility for assurance, and . . . require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources." Virginia Elec. & Power Co. v. Caldor, Inc-NY, 117 F.3d 646, 650 (2d. Cir. 1997) (quoting Penn Jersey, 72 B.R. at 985).

21. As set forth above, if Utility Companies are permitted to terminate utility services on the thirty-first (31st) day after the Petition Date, a substantial disruption to the Debtors' operations will occur, and the Debtors' business will be irreparably harmed. To avert a potential disaster, the Debtors would then be forced to pay whatever

amounts are demanded by the Utility Companies to avoid the cessation of essential utility services and, ultimately, the demise of their business.

22. The Debtors submit that the procedures set forth herein provide an orderly process for providing adequate assurance of payment to the Utility Companies, without risking irreparable harm to the estates. Because the fundamental nature of section 366 has not been changed by the 2005 amendments—that the Court has discretion to modify any request for assurance of payment and that the assurance of payment need only be adequate in light of the facts and circumstances of a given case—the determination procedures are similar to those approved by courts prior to the 2005 amendments to the Bankruptcy Code. However, as set forth above, and in accordance with section 366(c)(1)(A) of the Bankruptcy Code, the Debtors are offering to provide Requesting Utilities with a Deposit.

23. Without the procedures set forth herein, the Debtors could be forced to address numerous requests by Utility Companies in a haphazard manner at a critical period, while the Debtors are trying to reorganize their businesses. The Debtors could be forced to capitulate to almost any demands made by their many Utility Companies, or face the discontinuation of utility service to their manufacturing facilities and a potential shutdown of their businesses. The orderly process contemplated by the procedures set forth herein will avert such a potentially disastrous outcome, enabling the Debtors to make a smooth transition into Chapter 11, while ensuring a fair process for providing adequate assurance to the Utility Companies to the extend required.

24. Prior to the effective date of the Bankruptcy Abuse and Prevention and Consumer Protection Act of 2005, procedures similar to the procedures detailed herein,

which afforded Utility Companies their due process rights while protecting debtors' estates from interruption of utility services, have been approved many times by this Court. See, e.g., In re Pliant Corp., Case No. 06-10001 (Bankr. D. Del. Jan 4, 2006); In re FLYi, Inc., Case No. 05-20011 (Bankr. D. Del. Dec. 2, 2005); In re Musicland Holdings Corp., Case No. 06-10064 (Bankr. S.D.N.Y. Feb. 2, 2006); In re Calpine Corp., Case No. 05-60200 (Bankr. S.D.N.Y. Jan. 18, 2006); In re Romacorp., Inc., Case No. 86818-BJH-11 (Bankr. N.D. Tex. Nov. 9, 2005); In re McLeodusa Inc., Case No. 05-63229 (Bankr. N.D. Ill. Oct. 31, 2005).

25. Accordingly, based on the foregoing facts and authorities, the Debtors believe that granting the relief requested herein will not prejudice the rights of the Utility Companies under section 366 of the Bankruptcy Code.

NOTICE

26. Notice of this Motion has been provided to: (a) the United States Trustee for the District of Delaware; (b) those parties listed on the Consolidated List of Creditors Holding Largest Thirty Unsecured Claims Against the Debtors, as identified in their Chapter 11 petitions; (c) counsel to the Debtors' post-petition secured lenders; (d) counsel to the Debtors' pre-petition secured lenders; (e) the Indenture Trustee for the Debtors' 10^{5/8}% senior subordinated notes; (f) counsel to the Ad Hoc Committee of a majority of the Debtors' 10^{5/8}% senior subordinated notes; and (g) all Utility Companies. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

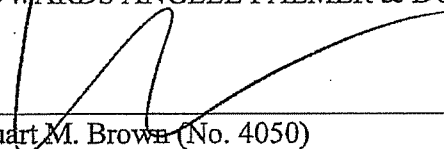
27. The Debtors have not previously sought the relief requested herein from this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter a Bridge Order, in substantially the form attached hereto as Exhibit A, and a Final Order, in substantially the form attached hereto as Exhibit B, (i) prohibiting the Utility Companies from discontinuing, altering or refusing service to the Debtors, (ii) deeming the Utility Companies adequately assured of future performance, (iii) establishing procedures for determining requests for additional assurance, and (iv) granting such other and further relief as the Court deems just and proper.

Dated: Wilmington, Delaware
December 18, 2006

Respectfully submitted,

EDWARDS ANGELL PALMER & DODGE LLP



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*Proposed Counsel to the Debtors and
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Exhibit A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
AMTROL HOLDINGS, INC., <i>et al.</i> ¹	:	Case No. 06-_____ ()
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	

**BRIDGE ORDER (I) PROHIBITING UTILITY COMPANIES
FROM DISCONTINUING, ALTERING OR REFUSING SERVICE,
(II) ESTABLISHING PROCEDURES FOR PROVIDING DEPOSITS TO
REQUESTING UTILITIES, (III) DEEMING UTILITY COMPANIES TO HAVE
ADEQUATE ASSURANCE OF PAYMENT, AND (IV) ESTABLISHING
PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL
ASSURANCE PURSUANT TO 11 U.S.C. §§ 105(a) & 366**

Upon consideration of the Motion² of the above-captioned debtors and debtors-in-possession for entry of (a) a Bridge Order and (b) a Final Order (i) prohibiting the Utility Companies from discontinuing, altering or refusing service to the Debtors, (ii) establishing procedures whereby the Debtors will provide Deposits to Requesting Utilities, (iii) deeming the Utility Companies to have received adequate assurance of payment, and (iv) establishing procedures for determining requests for additional assurances of payment; and upon consideration of the Motion and all pleadings related thereto, including the Guillemette Affidavit; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and this Motion is proper pursuant to 28 U.S.C.

¹ Additional debtors include all of Amtrol Holdings, Inc.'s wholly-owned domestic subsidiaries: Amtrol Inc.; Water Soft Inc.; and Amtrol International Investments Inc.

² All capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

§§ 1408 and 1409; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and creditors; and after due deliberation thereon, and good and sufficient cause appearing therefore; it is hereby

ORDERED, that until such time as the Final Order is entered by the Court, all Utility Companies are prohibited from discontinuing, altering or refusing service to the Debtors on account of any unpaid pre-petition charges, or discriminating against the Debtors, or requiring payment of a deposit or receipt of any other security for continued service as a result of the Debtors' bankruptcy filing or any outstanding pre-petition invoices other than as set forth in the Motion; and it is further

ORDERED, that notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved debtor-in-possession financing facility, or budget in connection therewith, or any order regarding the use of cash collateral; and it is further

ORDERED, that the Utility Motion and this Bridge Order shall be served on each Utility Company the Debtors believe could be affected by the Utility Motion and all other parties required to receive service under Del. Bankr. L.R. 2002-1(b) within five (5) days of entry of this Bridge Order; and it is further

ORDERED, that the deadline by which objections to the Utility Motion and the Final Order must be filed is _____, at ____ p.m. (ET). A final hearing, if required, on the Utility Motion will be held on _____ at ____ a.m. (ET). If no objections are filed to the Utility Motion, the Court may enter the Final Order without further notice or hearing.

Dated: _____, 2006
Wilmington, Delaware

United States Bankruptcy Judge

Exhibit B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
AMTROL HOLDINGS, INC., <i>et al.</i> ¹	:	Case No. 06-_____ ()
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	

**FINAL ORDER (I) PROHIBITING UTILITY COMPANIES
FROM DISCONTINUING, ALTERING OR REFUSING SERVICE,
(II) ESTABLISHING PROCEDURES FOR PROVIDING DEPOSITS TO
REQUESTING UTILITIES, (III) DEEMING UTILITY COMPANIES TO HAVE
ADEQUATE ASSURANCE OF PAYMENT, AND (IV) ESTABLISHING
PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL
ASSURANCE PURSUANT TO 11 U.S.C. §§ 105(A) & 366**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors-in-possession for entry of an order pursuant to sections 105(a) and 366 of the Bankruptcy Code: (i) prohibiting the Utility Companies from discontinuing, altering or refusing service to the Debtors, (ii) establishing procedures whereby the Debtors will provide Deposits to Requesting Utilities, (iii) deeming the Utility Companies to have received adequate assurance of payment, and (iv) establishing procedures for determining requests for additional assurances of payment; and due and proper notice of the Motion having been given; and it appearing that no other or further notice is required; and upon consideration of the Motion and all pleadings related thereto, including the Guillemette Affidavit; and it appearing that the Court has jurisdiction to consider the Motion in

¹ Additional debtors include all of Amtrol Holdings, Inc.’s wholly-owned domestic subsidiaries: Amtrol Inc.; Water Soft Inc.; and Amtrol International Investments Inc.

² All capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and creditors; and after due deliberation thereon, and good and sufficient cause appearing therefore; it is hereby

ORDERED, that the Motion is granted; and it is further

ORDERED, that absent any further order of the Court each Utility Company is hereby prohibited from (i) discontinuing, altering, or refusing service to the Debtors on account of any unpaid pre-petition charges or otherwise, or (ii) requiring the payment of a security deposit or receipt of any other security from the Debtors in connection with any unpaid pre-petition charges except as set forth herein and in the Motion; and it is further

ORDERED, that the procedures for determining requests for additional assurance of payment as described in the Motion are approved as follows:

- a) Other than as set forth herein, each Utility Company is prohibited from discontinuing, altering, refusing service to, or discriminating against the Debtors until, after a Determination Hearing, this Court issues a final order authorizing such action;
- b) Other than pursuant to the procedures set forth herein and in the Motion, the Utility Companies are prohibited from requiring additional adequate assurance of payment from the Debtors whether in connection with any unpaid pre-petition charges or otherwise;
- c) Within five (5) days after the entry of this Final Order granting the relief requested herein, the Debtors shall serve this Final Order on the Utility Companies;
- d) Utility Companies shall have twenty (20) days from the date of entry of this Final Order approving the procedures described herein to send an Additional Payment Request in the manner set forth in the Motion;

- e) The Debtors shall have ten (10) days to comply with each such Additional Payment Request by providing Requesting Utilities with a Deposit in an amount equal to the average cost to the Debtors of two weeks of service from such Requesting Utility over the twelve (12) months preceding the Petition Date provided that such Requesting Utility does not already hold a deposit equal to or greater than two (2) weeks of utility services, and provided further that such utility is not currently paid in advance for its services.³
- f) Utility Companies that do not file an Additional Payment Request by the Additional Payment Request Deadline shall be deemed to have received satisfactory adequate assurance of payment in accordance with section 366(c)(1)(A)(vi);⁴
- g) If a Utility Company does not believe that it has received satisfactory adequate assurance of payment, regardless of whether it has received a Deposit, pursuant to the procedures set forth herein and in the Motion, it may file an Additional Assurance Appeal pursuant to the procedures set forth herein and in the Motion. Specifically, the Additional Assurance Appeal may be filed with this Court at any time after a Utility Company becomes an Advance Payment Utility Company or Consenting Utility Company and must (i) be in writing, (ii) set forth the location for which utility services are provided, (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits or other pre-payments or assurances previously provided by the Debtors, (iv) describe in sufficient detail the reason(s) why the treatment afforded pursuant to the procedures set forth herein does not constitute satisfactory adequate assurance of payment, and (v) include a proposal for what would constitute adequate assurance from the Debtors, along with an explanation of why such proposal is reasonable;
- h) The Debtors shall be entitled to comply with or compromise, Additional Assurance Appeals in their sole discretion and without further notice or order of the Court; provided, however, that the Debtors may not provide additional adequate assurance to a Utility Company either (i) in the amount requested by such Utility Company in its Additional Assurance Appeal or (ii) in an amount agreed to by the Debtors and such Utility Company, without the consent of the DIP Lender, in its sole discretion;

³ In the event that a Utility Company sends the Debtors an Additional Payment Request prior to the entry of this Final Order approving the procedures described herein, the Debtors shall have until the entry of this Final Order to comply with such Additional Payment Request.

⁴ For those Utility Companies that are subsequently added to Exhibit C, the Debtors shall serve a copy of the Order on such Utility Companies, along with an amended Exhibit C, and such subsequently added entities shall have twenty (20) days from service of the Order to make an Additional Payment Request.

- i) Where a Utility Company filed an Additional Assurance Appeal and the Debtors are unable to reach a compromise, a hearing to determine whether additional assurance is necessary (a “**Determination Hearing**”) will be held on either (i) the Debtor’s next omnibus hearing date if the Additional Assurance Appeal is filed on or before the date that is fifteen (15) days prior to such omnibus hearing or (ii) the following omnibus hearing date if the Additional Assurance Appeal is filed thereafter;
- j) Any Deposit or assurance of payment provided by the Debtors to a Requesting Utility will, to the extent not used by the Utility Company to satisfy a post-petition default, be returned to the Debtors within thirty (30) days after the earlier of: (i) the consummation of a sale of substantially all of the Debtors assets pursuant to section 363 of the Bankruptcy Code; or (ii) the effective date of a plan of reorganization or liquidation in these Chapter 11 cases without further order of the Court, or otherwise as ordered by the Court.

ORDERED, that the Debtors are authorized, in their sole discretion, to amend Exhibit C to the Motion to add or delete any Utility Company, and this Order shall apply to any such Utility Company that is subsequently added to Exhibit C to the Motion; and it is further

ORDERED, that notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved debtor-in-possession financing facility, or budget in connection therewith, or any order regarding the use of cash collateral; and it is further

ORDERED, that the Debtors are hereby authorized and empowered to take all actions necessary to implement the relief granted in this Order; and it is further

ORDERED, that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2006
Wilmington, Delaware

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

_____	X	
In re	:	Chapter 11
AMTROL HOLDINGS, INC., <i>et al.</i> ¹	:	Case No. 06-11446 (KG)
	:	(Jointly Administered)
Debtors.	:	
	:	
_____	X	

AFFIDAVIT OF SERVICE


I, Staci McFadden, hereby certify that, on the 19th day of December, 2006, I caused the following documents to be served via overnight mail upon the service list attached hereto as Exhibit A via facsimile upon the service list attached hereto as Exhibit B; and via email notification upon the service list attached hereto as Exhibit C;

- Motion of the Debtors for a Bridge Order and a Final Order (I) Prohibiting Utility Companies from Discontinuing, Altering or Refusing Service, (II) Establishing Procedures for Providing Deposits to Requesting Utilities, (III) Deeming Utility Companies to Have Adequate Assurance of Payment, and (IV) Establishing Procedures for Resolving Requests for Additional Assurance Pursuant to 11 U.S.C. §§ 105(a) and 366 [Docket No. 23]

¹ Additional debtors include all of Amtrol Holdings, Inc.'s wholly-owned domestic subsidiaries: Amtrol Inc.; Water Soft Inc.; and Amtrol International Investments Inc.

- **Exhibit C to Motion of the Debtors for a Bridge Order and a Final Order (I) Prohibiting Utility Companies from Discontinuing, Altering or Refusing Service, (II) Establishing Procedures for Providing Deposits to Requesting Utilities, (III) Deeming Utility Companies to Have Adequate Assurance of Payment, and (IV) Establishing Procedures for Resolving Requests for Additional Assurance Pursuant to 11 U.S.C. §§ 105(a) and 366 [Docket No. 29]**

Dated: December 19, 2006



Staci McFadden

Kurtzman Carson Consultants LLC
12910 Culver Blvd., Suite I
Los Angeles, CA 90066
(310) 823-9000

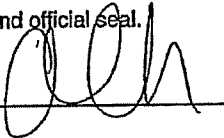
State of California, County of Los Angeles

Subscribed and sworn to before me on this 19th day of December, 2006, by Staci McFadden, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

WITNESS my hand and official seal.

Signature

Amy Huh



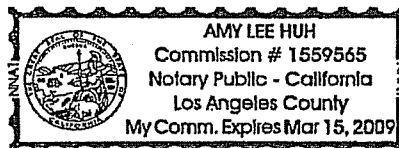


EXHIBIT A

EXHIBIT A

NAME	NOTICE NAME	ADDRESS 1	ADDRESS 2	CITY	STATE	ZIP	COUNTRY
ACCURATE MOLDED PRODUCTS	ATTN: HOWARD DEVINE	459 WARWICK INDUSTRIAL DRIVE		WARWICK	RI	02886-2460	
ADMIRAL METALS INCORPORATED	ATTN: KRISTIN WALKER	11 FORBES ROAD		WOBBURN	MA	01801	
ALLIED WASTE SERVICES #050		260 W DICKMAN ST.		BALTIMORE	MD	21230-5005	
AMERADA HESS CORP		PO BOX 905243		CHARLOTTE	NC	28290-5243	
AMERADA HESS CORPORATION	ATTN: MARY YOUNG	ONE HESS PLAZA		WOODBRIE	NJ	07095	
ARCH WIRELESS		PO BOX 4062		WOBBURN	MA	01886-4062	
AT&T		PO BOX 13134		NEWARK	NJ	07101-5634	
AT&T		PO BOX 830019		BALTIMORE	MD	21283-0019	
AT&T		PO BOX 830022		BALTIMORE	MD	21283-0022	
AT&T		PO BOX 830120		BALTIMORE	MD	21283-0120	
ATMOS ENERGY		PO BOX 9001949		LOUISVILLE	KY	40290-1949	
BALTIMORE GAS & ELECTRIC		PO BOX 1475		BALTIMORE	MD	21203	
BALTIMORE METERED WATER		DEPARTMENT OF FINANCE	200 HOLLIDAY ST.	BALTIMORE	MD	21202	
BAMBERGER POLYMERS INC	ATTN: GREG FALCONE	TWO JERICHO PLAZA, SUITE 109		JERICHO	NY	11753	
BARCLAYS CAPITAL	JASON WHITE	INVESTMENT BANKING DIV.	200 PARK AVE., 4TH FL.	NEW YORK	NY	10166	
BARCLAYS CAPITAL	JOSEPH JORDAN	INVESTMENT BANKING DIV.	200 PARK AVE., 4TH FL.	NEW YORK	NY	10166	
BELL SOUTH		PO BOX 70529		CHARLOTTE	NC	28272-0529	
BLUE CROSS BLUE SHIELD OF RHODE ISLAND	ATTN: CELINA ROSA	444 WESTMINSTER STREET		PROVIDENCE	RI	02903-3279	
CDF CORPORATION	ATTN: JOE SULLIVAN	77 INDUSTRIAL PARK ROAD		PLYMOUTH	MA	02360	
CINGULAR		17000 CANTRELL RD., 1ST FL.		LITTLE ROCK	AR	72223-4266	
CINGULAR		PO BOX 17587		BALTIMORE	MD	21297-1587	
COMMERCIAL METAL FORMING	ATTN: AL MILLER	1775 LOGAN AVENUE	PO BOX 599	YOUNGSTOWN	OH	44501	
COMMERCIAL WASTE DISPOSAL		PO BOX 7003		MAYFIELD	KY	42066-7003	
CRYSTAL STAMPING CORPORATION	ATTN: JIM DIMILLIO	PO BOX 1		PAWTUCKET	RI	02861	
DENMAN & DAVIS	ATTN: ROB BOUCHER	1 BROAD STREET	PO BOX 1979	CLIFTON	NJ	07015	
FOOTILL CAPITAL CORP.	C/O SCHULTE ROTH & ZABEL LLP	KIRBY CHIN	919 THIRD AVE.	NEW YORK	NY	10022	
FW WEBB CO	ATT: TED BRIAN	160 MIDDLESEX TURNPIKE		BEDFORD	MA	01730	
GOODYEAR TIRE & RUBBER CO	ATTN: BOB LYLE	PO BOX 3571		AKRON	OH	44309-3571	
GUNTHER NEUMANN		1 RAVENS WAY		WEST WARWICK	RI	02883	
HINDLEY MANUFACTURING CO	ATTN: CHARLES HINDLEY	9 HAVENS STREET	PO BOX 38	CUMBERLAND	RI	02864	
INTERNAL REVENUE SERVICE		31 HOPKINS PLAZA	ROOM 1150	BALTIMORE	MD	21201	
KENNETH KIRK		1211 COMMODORE DRIVE		WEST SMYRNA BEACH	FL		
KENT COUNTY WATER AUTHORITY		PO BOX 192		WEST WARWICK	RI	02893-0192	
LATHAM & WATKINS LLP	ALAN LEAVITT	633 W FIFTH ST., STE. 4000		LOS ANGELES	CA	90071-2007	
LATHAM & WATKINS LLP	ERIKA RUIZ	885 THIRD AVE.		NEW YORK	NY	10022-4834	
LATHAM & WATKINS LLP	MICHAEL RIELA	885 THIRD AVE.		NEW YORK	NY	10022-4834	
LATHAM & WATKINS LLP	MITCH SEIDER	885 THIRD AVE.		NEW YORK	NY	10022-4834	
LATHAM & WATKINS LLP	ROMAN WICKS	885 THIRD AVE.		NEW YORK	NY	10022-4834	
LINCOLN ELECTRIC	ATTN: JASON DODY	22801 SAINT CLAIR AVENUE		CLEVELAND	OH	44117-1199	
LUTCO INC	ATTN: DAVID GRANQUIST	THOMAS SMITH DIVISION	677 CAMBRIDGE STREET	WORCESTER	MA	01610	
MACSTEEL SERVICE CENTERS USA	ATTN: BILL LOVELAND	EASTERN DIVISION	385 WEST HOLLIS STREET	NASHUA	NH	03060	
MAFCO INCORPORATED	ATTN: BOB FLANAGAN	1203 NORTH 6TH STREET	PO BOX 1058	ROGERS	AR	72757	
METALS USA	ATTN: JIM HOFFMAN	10 TOWER ROAD		SEEKONK	MA	02771	
NATIONAL GRID		PO BOX 1048		WOBBURN	MA	01807-1048	
NATIONAL GRID	PROCESSING CENTER			WOBBURN	MA	01807-0049	
NEW ENGLAND PLASTICS	ATTN: JIM OSBORNE	310 SALEM STREET		WOBBURN	MA	01801	
NEWPORT GLOBAL ADVISORS	RYAN LANGDON	21 WATERWAY ROAD, SUITE 150		THE WOODLANDS	TX	77380	

In re Amtrac Holdings, Inc., et al.
Case No. 06-11446

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EXHIBIT A

NAME	NOTICE NAME	ADDRESS 1	ADDRESS 2	CITY	STATE	ZIP	COUNTRY
OFFICE OF THE UNITED STATES TRUSTEE	J. CALEB BOGGS FEDERAL BUILDING	SECOND FLOOR, ROOM 2112	2844 KING STREET, SUITE 2207	WILMINGTON	DE	19801	
PADUCAH POWER SYSTEM		1500 BROADWAY	PO BOX 180	PADUCAH	KY	42001	
PADUCAH WATER WORKS		PO BOX 2477		PADUCAH	KY	42002-2477	
PALLET ONE	ATTN: SCOTT CARON	DBA ISAACSON LUMBER COMPANY	PO BOX L	LIVERMORE FALLS	ME	04254	
PAUL HASTINGS, JANOFISKY & WALKER, LLP	JESSE AJUSTIN	600 PEACHTREE ST., N.E., 24TH FL		ATLANTA	GA	30308	
PAUL HASTINGS, JANOFISKY & WALKER, LLP	JOHN HILSON	515 S. FLOWER ST.		LOS ANGELES	CA	90071	
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP	ANDREW ROSENBERG	1285 AVENUE OF THE AMERICAS		NEW YORK	NY	10019-6064	
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP	KELLEY CORNISH	1285 AVENUE OF THE AMERICAS		NEW YORK	NY	10019-6064	
RAND WHITNEY CONTAINER	ATTN: ADAM TOMINSKY	465 NARRAGANSETT PARK DRIVE		PAWTUCKET	RI	02861	
SCHULTE ROTH & ZABEL LLP	LAWRENCE GELBER	919 THIRD AVE.		NEW YORK	NY	10022	
SCHULTE ROTH & ZABEL LLP	TODD MATRAS	919 THIRD AVE.		NEW YORK	NY	10022	
SECRETARY OF STATE	DIVISION OF CORPORATIONS FRANCHISE						
SECRETARY OF TREASURY	TAX	PO BOX 7040		DOVER	DE	19903	
SECURITIES & EXCHANGE COMMISSION		PO BOX 7040		DOVER	DE	19903	
SECURITIES & EXCHANGE COMMISSION		15TH & PENNSYLVANIA AVE NW		WASHINGTON	DC	20020	
SMURFIT STONE	NATHAN FUCHS ESQ	NEW YORK REGIONAL OFFICE	233 BROADWAY	NEW YORK	NY	10279	
SPRAYLAT CORPORATION	ATTN: WILL CHILDERS	700 GARRETT PARKWAY		LEWISBURG	TN	37091	
SPRINT	ATTN: DAVID BROOKS	143 SPARKS AVENUE		PELHAM	NY	10803	
SPRINT / EMBARQ		PO BOX 4181		CAROL STREAM	IL	60197-4181	
SPRINT / EMBARQ		720 WESTERN BLVD.		TARBORO	NC	27886	
SPRINT / EMBARQ		PO BOX 660068		DALLAS	TX	75266-0068	
THE BANK OF NEW YORK, TRUST COMPANY N.A.	CORPORATE TRUST ADMINISTRATION	ATTN: PETER MURPHY VP	222 BERKELEY ST	BOSTON	MA	02116	
THE BANK OF NEW YORK, TRUST COMPANY N.A.	ATTN: PETER MURPHY, VICE PRESIDENT	222 BERKELEY STREET	2ND FL	BOSTON	MA	2116	
THONA CANADA	ATTN: DON PICARD	1635 BOUL INDUSTRIEL		MAGOG	PQ	J1X 5B3	CANADA
VERIZON		PO BOX 1		WORCESTER	MA	01654-0001	
VERIZON		PO BOX 1100		ALBANY	NY	12250-1100	
VERIZON		PO BOX 17577		BALTIMORE	MD	21297-0513	
WASTE MANAGEMENT OF RI		575 WEST ST., STE. 210		MANSFIELD	MA	02048	
WEST WARWICK SEWER COMMISSION		PO BOX 498		WEST WARWICK	RI	02893-0498	
WIELAND AMERICA INC	ATTN: SCOTT ANNEN	160 RELIABLE PARKWAY		CHICAGO	IL	60686	
WIT & CO LTD		2545 MILLIKIN PARKWAY		DECATUR	IL	62526	
WORKFLOW ONE	ATTN: LISA CASSIDY	CREDIT DEPT	220 E MONUMENT	DAYTON	OH	45402-1223	
YOSHIKAZU FUJIYOSHI		318 HEMLOCK DRIVE	AVENUE	EAST GREENWICH	RI	02818	

In re Amrol Holdings, Inc., et al.
Case No. 06-11446

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EXHIBIT B

EXHIBIT B

NAME	NOTICE NAME	FAX
ACCURATE MOLDED PRODUCTS	ATTN: HOWARD DEVINE	401-739-0150
ADMIRAL METALS INCORPORATED	ATTN: KRISTIN WALKER	781-937-4469
ALLIED WASTE SERVICES #050		410-712-9305
AMERADA HESS CORP		508-357-4730
AMERADA HESS CORPORATION	ATTN: MARY YOUNG	866-239-5671
ARCH WIRELESS		270-575-4009
AT&T		866-239-5671
AT&T		800-396-8675
AT&T		401-272-0506
AT&T		866-214-3740
ATMOS ENERGY		800-236-8781
BALTIMORE GAS & ELECTRIC		800-236-8781
BALTIMORE METERED WATER		800-555-9755
BAMBERGER POLYMERS INC	ATTN: GREG FALCONE	516-622-3610
BARCLAYS CAPITAL	JASON WHITE	212-412-7353
BARCLAYS CAPITAL	JOSEPH JORDAN	212-412-7680
BELL SOUTH		866-359-7637
BLUE CROSS BLUE SHIELD OF RHODE ISLAND	ATTN: CELINA ROSA	401-459-1885
CDF CORPORATION	ATTN: JOE SULLIVAN	508-747-3307
CINGULAR		866-774-3914
CINGULAR		931-221-3084
COMMERCIAL METAL FORMING	ATTN: AL MILLER	330-740-8229
COMMERCIAL WASTE DISPOSAL		931-221-3084
CRYSTAL STAMPING CORPORATION	ATTN: JIM DIMILLIO	401-727-3846
DENMAN & DAVIS	ATTN: ROB BOUCHER	973-684-8723
FOOTILL CAPITAL CORP.	C/O SCHULTE ROTH & ZABEL LLP	212-593-5955
FW WEBB CO	ATT: TED BRIAN	978-937-5522
GOODYEAR TIRE & RUBBER CO	ATTN: BOB LYTLE	330-796-8161
HINDLEY MANUFACTURING CO	ATTN: CHARLES HINDLEY	401-722-3083
LATHAM & WATKINS LLP	ALAN LEAVITT	213-891-8763
LATHAM & WATKINS LLP	ERIKA RUIZ	212-751-4864
LATHAM & WATKINS LLP	MICHAEL RIELA	212-751-4864
LATHAM & WATKINS LLP	MITCH SEIDER	212-751-4864
LATHAM & WATKINS LLP	RONAN WICKS	212-751-4864
LINCOLN ELECTRIC	ATTN: JASON DODY	216-383-4720
LUTCO INC	ATTN: DAVID GRANQUIST	508-799-6848
MACSTEEL SERVICE CENTERS USA	ATTN: BILL LOVELAND	603-886-0828
MAFCO INCORPORATED	ATTN: BOB FLANAGAN	479-631-3896
METALS USA	ATTN: JIM HOFFMAN	508-399-6120
NATIONAL GRID		252-824-2737
NATIONAL GRID	PROCESSING CENTER	866-833-5023
NEW ENGLAND PLASTICS	ATTN: JIM OSBORNE	781-933-2726
OFFICE OF THE UNITED STATES TRUSTEE	J. CALEB BOGGS FEDERAL BUILDING	302-573-6497
PADUCAH POWER SYSTEM		877-245-4058
PALLET ONE	ATTN: SCOTT CARON	207-897-5713
PAUL, HASTINGS, JANOFSKY & WALKER, LLP	JESSE AUSTIN	404-685-5208
PAUL, HASTINGS, JANOFSKY & WALKER, LLP	JOHN HILSON	213-996-3300
RAND WHITNEY CONTAINER	ATTN: ADAM TOMINSKY	401-723-3710
SCHULTE ROTH & ZABEL LLP	LAWRENCE GELBER	212-593-5955
SCHULTE ROTH & ZABEL LLP	TODD MATRAS	212-593-5955
SMURFIT STONE	ATTN: WILL CHILDERS	931-359-6670

EXHIBIT B

NAME	NOTICE NAME	FAX
SPRAYLAT CORPORATION	ATTN: DAVID BROOKS	914-712-2838
SPRINT		800-836-0914
SPRINT / EMBARQ		410-396-5531
SPRINT / EMBARQ		401-823-4810
THE BANK OF NEW YORK TRUST COMPANY NA	CORPORATE TRUST ADMINISTRATION	617-351-2401
THE BANK OF NEW YORK, TRUST COMPANY N.A.	ATTN: PETER MURPHY, VICE PRESIDENT	617-351-2401
THONA CANADA	ATTN: DON PICARD	819-843-3501
VERIZON		270-443-9627
VERIZON		401-822-9263
VERIZON		410-347-5199
WASTE MANAGEMENT OF RI		270-247-8986
WEST WARWICK SEWER COMMISSION		508-337-1223
WIELAND AMERICA INC	ATTN: SCOTT ANNEN	847-537-4085
WIT & CO LTD		217-423-0883
WORKFLOW ONE	ATTN: LISA CASSIDY	937-913-3040

EXHIBIT C

EXHIBIT C

NAME	NOTICE NAME	EMAIL
ARCH WIRELESS		customer.care@usamobility.com
BARCLAYS CAPITAL	JASON WHITE	jason.white@barclayscapital.com
BARCLAYS CAPITAL	JOSEPH JORDAN	joseph.jordan@barclayscapital.com
FOOTILL CAPITAL CORP.	C/O SCHULTE ROTH & ZABEL LLP	kirby.chin@srz.com
LATHAM & WATKINS LLP	ALAN LEAVITT	alan.leavitt@lw.com
LATHAM & WATKINS LLP	ERIKA RUIZ	erika.ruiz@lw.com
LATHAM & WATKINS LLP	MICHAEL RIELA	michael.riela@lw.com
LATHAM & WATKINS LLP	MITCH SEIDER	mitchell.seider@lw.com
LATHAM & WATKINS LLP	RONAN WICKS	ronan.wicks@lw.com
NATIONAL GRID	PROCESSING CENTER	Customerservice@us.ngrid.com
NEW ENGLAND PLASTICS	ATTN: JIM OSBORNE	
NEWPORT GLOBAL ADVISORS	RYAN LANGDON	rlangdon@ngalp.com
PAUL, HASTINGS, JANOFFSKY & WALKER, LLP	JESSE AUSTIN	jessaustin@paulhastings.com
PAUL, HASTINGS, JANOFFSKY & WALKER, LLP	JOHN HILSON	johnhilson@paulhastings.com
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP	ANDREW ROSENBERG	arosenberg@paulweiss.com
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP	KELLEY CORNISH	kcomish@paulweiss.com
RAND WHITNEY CONTAINER	ATTN: ADAM TOMINSKY	
SCHULTE ROTH & ZABEL LLP	LAWRENCE GELBER	lawrence.gelber@srz.com
SCHULTE ROTH & ZABEL LLP	TODD MATRAS	todd.matras@srz.com

Exhibit C

CREDITOR NAME	CREDITOR NOTICE NAME	ADDRESS1	ADDRESS2	CITY	STATE	ZIP
ALLIED WASTE SERVICES #050		260 W DICKMAN ST.		BALTIMORE	MD	21230-5005
AMERADA HESS CORP		PO BOX 905243		CHARLOTTE	NC	28290-5243
ARCH WIRELESS		PO BOX 4062		WOBN	MA	01888-4062
AT&T		PO BOX 13134		NEWARK	NJ	07101-5634
AT&T		PO BOX 830019		BALTIMORE	MD	21283-0019
AT&T		PO BOX 830022		BALTIMORE	MD	21283-0022
AT&T		PO BOX 830120		BALTIMORE	MD	21283-0120
ATMOS ENERGY		PO BOX 9001949		LOUISVILLE	KY	40290-1949
BALTIMORE GAS & ELECTRIC		PO BOX 1475		BALTIMORE	MD	21203
BALTIMORE METERED WATER		DEPARTMENT OF FINANCE	200 HOLLIDAY ST.	BALTIMORE	MD	21202
BELL SOUTH		PO BOX 70529		CHARLOTTE	NC	28272-0529
CINGULAR		PO BOX 17587		BALTIMORE	MD	21297-1587
CINGULAR		17000 CANTRELL RD., 1ST FL.		LITTLE ROCK	AR	72223-4266
COMMERCIAL WASTE DISPOSAL		PO BOX 7003		MAYFIELD	KY	42066-7003
KENT COUNTY WATER AUTHORITY		PO BOX 192		WEST WARWICK	RI	02893-0192
NATIONAL GRID	PROCESSING CENTER			WOBN	MA	01807-0049
NATIONAL GRID		PO BOX 1048		WOBN	MA	01807-1048
PADUCAH POWER SYSTEM		1500 BROADWAY	PO BOX 180	PADUCAH	KY	42001
PADUCAH WATER WORKS		PO BOX 2477		PADUCAH	KY	42002-2477
SPRINT		PO BOX 4181		CAROL STREAM	IL	60197-4181
SPRINT / EMBARQ		720 WESTERN BLVD.		TARBORO	NC	27886
SPRINT / EMBARQ		PO BOX 660068		DALLAS	TX	75266-0068
VERIZON		PO BOX 1		WORCESTER	MA	01654-0001
VERIZON		PO BOX 1100		ALBANY	NY	12250-1100
VERIZON		PO BOX 17577		BALTIMORE	MD	21297-0513
WASTE MANAGEMENT OF RI		575 WEST ST., STE. 210		MANSFIELD	MA	02048
WEST WARWICK SEWER COMMISSION		PO BOX 498		WEST WARWICK	RI	02893-0498

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12/14/2006
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
AMTROL HOLDINGS, INC., <i>et al.</i> ¹	:	Case No. 06-11446 (KG)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	RE: Docket No. <u>23</u>

**BRIDGE ORDER (I) PROHIBITING UTILITY COMPANIES
FROM DISCONTINUING, ALTERING OR REFUSING SERVICE,
(II) ESTABLISHING PROCEDURES FOR PROVIDING DEPOSITS TO REQUESTING
UTILITIES, (III) DEEMING UTILITY COMPANIES TO HAVE ADEQUATE
ASSURANCE OF PAYMENT, AND (IV) ESTABLISHING PROCEDURES FOR
RESOLVING REQUESTS FOR ADDITIONAL ASSURANCE PURSUANT TO 11 U.S.C.
§§ 105(a) & 366**

Upon consideration of the Motion² of the above-captioned debtors and debtors-in-possession for entry of (a) a Bridge Order and (b) a Final Order (i) prohibiting the Utility Companies from discontinuing, altering or refusing service to the Debtors, (ii) establishing procedures whereby the Debtors will provide Deposits to Requesting Utilities, (iii) deeming the Utility Companies to have received adequate assurance of payment, and (iv) establishing procedures for determining requests for additional assurances of payment; and upon consideration of the Motion and all pleadings related thereto, including the Guillemette Affidavit; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion

¹ Additional debtors include all of Amtrol Holdings, Inc.'s wholly-owned domestic subsidiaries: Amtrol Inc.; Water Soft Inc.; and Amtrol International Investments Inc.

² All capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

is in the best interests of the Debtors, their estates, and creditors; and after due deliberation thereon, and good and sufficient cause appearing therefore; it is hereby

ORDERED, that until such time as the Final Order is entered by the Court, all Utility Companies are prohibited from discontinuing, altering or refusing service to the Debtors on account of any unpaid pre-petition charges, or discriminating against the Debtors, or requiring payment of a deposit or receipt of any other security for continued service as a result of the Debtors' bankruptcy filing or any outstanding pre-petition invoices other than as set forth in the Motion; and it is further

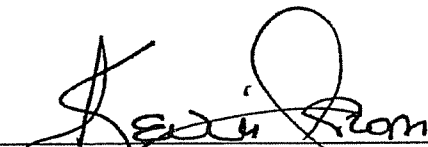
ORDERED, that notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved debtor-in-possession financing facility, or budget in connection therewith, or any order regarding the use of cash collateral; and it is further

ORDERED, that the Utility Motion and this Bridge Order shall be served on each Utility Company the Debtors believe could be affected by the Utility Motion and all other parties required to receive service under Del. Bankr. L.R. 2002-1(b) within five (5) days of entry of this Bridge Order; and it is further

→ ORDERED, that notwithstanding the language contained in the prior paragraph, the Debtors agree to establish a utility escrow account in the amount of \$150,000, said amount representing approximately two weeks of average utility payables.

ORDERED, that the deadline by which objections to the Utility Motion and the Final Order must be filed is January 8, 2007, at 5:00 p.m. (ET). A final hearing, if required, on the Utility Motion will be held on January 11, 2007 at 2:00 p.m. (ET). If no objections are filed to the Utility Motion, the Court may enter the Final Order without further notice or hearing.

Dated: Dec. 2 2006
Wilmington, Delaware


The Honorable Kevin Gross
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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:
In re: : Chapter 11
:
AMTROL HOLDINGS, INC., et al., : Case No. 06-11446 (KG)
:
: (Jointly Administered)
Debtors. :
: Re: Docket Nos. 23 and 51
: Objection Deadline: 1/08/07
: Hearing Date: 1/11/07 at 2:00 p.m.
-----X

OBJECTION OF NEW ENGLAND GAS COMPANY AND NARRAGANSETT ELECTRIC COMPANY, BOTH d/b/a NATIONAL GRID, TO DEBTORS' MOTION FOR A BRIDGE AND FINAL ORDER (I) PROHIBITING UTILITY COMPANIES FROM DISCONTINUING, ALTERING OR REFUSING SERVICE, (II) ESTABLISHING PROCEDURES FOR PROVIDING DEPOSITS TO REQUESTING UTILITIES, (III) DEEMING UTILITY COMPANIES TO HAVE ADEQUATE ASSURANCE OF PAYMENT, AND (IV) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL ASSURANCE PURSUANT TO U.S.C. §§ 105(a) & 366

New England Gas Company and Narragansett Electric Company, both d/b/a National Grid (collectively, "National Grid" or "Utilities"), by counsel, object to the Debtors' Motion For a Bridge Order and a Final Order (I) Prohibiting Utility Companies From Discontinuing, Altering or Refusing Service, (II) Establishing Procedures For Providing Deposits To Requesting Utilities, (III) Deeming Utility Companies To Have Adequate Assurance of Payment, and (IV) Establishing Procedures For Resolving Requests For Additional Assurance Pursuant To 11 U.S.C. §§ 105(a) & 366 (the "Utility Motion"), and set forth the following:

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Introduction

Despite the fact that Congress amended Section 366 of the Bankruptcy Code to reverse the prior practice of many bankruptcy courts making an initial determination of adequate assurance of payment on motions heard on an *ex parte* basis at the commencement of the bankruptcy proceeding, these and other debtors, have been filing motions at the outset of their bankruptcy proceedings seeking to specifically avoid the provisions and requirements set forth in the amended Section 366. Specifically, amended Section 366 requires a Debtor to provide utilities with adequate assurance of payment in one of the forms set forth in Section 366(c) within 30 days of the Petition Date. If the Debtor believes the utilities' requests are unreasonable or need to be modified, they can file a Motion with the Court seeking to modify the utilities' requests (a "Modification Motion").

The Debtors ask this Court to ignore the plain language and requirements of Section 366. Specifically, instead of contacting their 17 utility companies and/or waiting to receive their deposit requests and follow the requirements and procedures set forth in Section 366, the Debtors request this Court to establish a two-week deposit as adequate assurance of payment and require utilities to file objections and come to Court if they object to the Debtors' unilateral determination of adequate assurance of payment.

Instead of completely ignoring the requirements of the statute for Debtors that failed to contact their 17 utility companies regarding their requests for adequate assurance of payment, the Court should require the Debtors to comply with the requirements of Section 366(c). If the Debtor believes the Utilities' requests should be modified, the Debtors should file a Modification Motion demonstrating why the Court should find that the Utility's request should be modified and have the Modification Motion scheduled for a hearing.

In this case, the Utilities have made requests for adequate assurance of payment based on the following factors: (1) the exposure established by the Utilities' state mandated billing cycles; (2) the Debtors' admittedly highly leveraged capital structure; (3) the excessive control the DIP Lender appears to have over the Debtors' operations; and (4) the Debtors willingness to provide a large super-priority carve-out for their professionals while seeking to deprive their utilities of the post-petition security they require. In contrast, the Debtors offer no objective basis for their two-week deposit proposal. Therefore, this Court should require the Debtors to provide the Utilities with the deposits they have requested herein and require the Debtors to file a Modification Motion if they believe the Utilities' requests for adequate assurance of payment should be modified.

Facts

1. On December 18, 2006 (the "Petition Date"), the Debtors commenced their cases under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") that are now pending with this Court. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

2. The Debtors' cases are being jointly administered.

The Utility Motion

3. On December 19, 2006, the Debtors filed the Utility Motion to address what they claim are 27 utility providers. A closer look at Exhibit C to the Utility Motion shows that the Debtors have 27 accounts with the following 17 utility providers:

A. 3 Waste Removal Companies (It is not clear that waste removal companies are utilities under Section 366 of the Bankruptcy Code);

B. 4 Water and Sewer Companies (One water utility also appears to provide power to the Debtors as well);

C. 6 phone companies; and

D. 5 gas and electric companies.

4. In the Utility Motion, the Debtors claim that their average monthly utility expenses are approximately \$320,000.00.

5. Through the Utility Motion, the Debtors seek to avoid the procedural and substantive requirements of Section 366.

Instead of responding to adequate assurance demands of their 17 utility companies, the Debtors have elected to file the Utility Motion and seek procedures that fail to provide utilities with adequate assurance of payment as required by Section 366.

6. Specifically, in the Utility Motion, the Debtors propose to provide as adequate assurance of future payment a deposit in an amount equal to the average cost to the Debtors of two weeks of service over the twelve months preceding the Petition Date to any requesting utility that does not already hold a deposit equal to or greater than two weeks of utility services or if the requesting utility is not currently paid in advance for its services. Utility Motion at ¶ 9. The Debtors further propose that the two week deposits shall only be paid to those utilities that send written notice of a request for a two week deposit to the Debtors, with a copy to Debtors' counsel, counsel to the DIP Lenders, counsel to any official committee of unsecured creditors, and the Office of the United States Trustee within twenty (20) days of the entry of a Final Order approving the procedures sought in the Utility Motion. Utility Motion at ¶ 10. Any utility that fails to make a timely request for a two week deposit is deemed to have waived its right to have received adequate assurance of payment. Utility Motion at ¶ 10.

7. The Debtors also propose that any utility that is not satisfied with the Debtors' mere two week deposit offer must,

within twenty (20) days of entry of a Final Order approving the relief sought in the Utility Motion, file an appeal with the Court ("Additional Assurance Appeal") that (i) sets forth the location for which utility services are provided, (ii) includes a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits or other pre-payments or assurances previously provided by the Debtors, (iii) describes in sufficient detail the reason(s) why the treatment afforded pursuant to the procedures set forth in the Utility Motion does not constitute satisfactory adequate assurance of payment, and (iv) includes a proposal for what would constitute adequate assurance from the Debtors, along with an explanation of why such proposal is reasonable. Utility Motion at ¶ 11.

8. The Debtors further propose that if a utility timely files an Additional Assurance Appeal with the relief sought therein which agreed to by the Debtors, the Debtors nevertheless cannot provide any additional adequate assurance to a utility either (i) in the amount requested by such utility in its Additional Assurance Appeal, or (ii) in an amount agreed to by the Debtors and the utility, without the consent of the DIP Lender, in its sole discretion. Utility Motion at ¶ 12.

9. Additionally, the Debtors propose that if a utility that timely files an Additional Assurance Appeal and the Debtors are unable to reach a compromise, a hearing to determine whether

additional assurance is necessary (a "Determination Hearing") will be held on either (i) the Debtors' next omnibus hearing date if the Adequate Assurance Appeal is filed on or before the date that is fifteen (15) days prior to such omnibus hearing or (ii) the following omnibus hearing date if the Additional Assurance Appeal is filed thereafter. Utility Motion at ¶ 13.

10. On December 2, 2006, the Court entered the *Bridge Order (I) Prohibiting Utility Companies From Discontinuing, Altering or Refusing Service, (II) Establishing Procedures For Providing Deposits To Requesting Utilities, (III) Deeming Utility Companies To Have Adequate Assurance of Payment, and (IV) Establishing Procedures For Resolving Requests For Additional Assurance Pursuant To 11 U.S.C. §§ 105(a) & 366* (the "Bridge Utility Order").

11. The Bridge Utility Order in part provided that the Debtors shall establish a utility escrow account in the amount of \$150,000 (\$160,000 would be ½ of the Debtors' estimated monthly expenses of \$320,000), which allegedly represents approximately two weeks of average utility payables.

12. A final hearing on the Utility Motion is scheduled for January 11, 2007 at 2:00 p.m., with objections to the Utility Motion and Final Order to be filed by January 8, 2007 at 5:00 p.m.

**Facts Regarding the Debtors Which Support
National Grid's Request For Adequate Assurance of Payment**

13. The Debtors design, manufacture and market pressure control and storage products used in water systems applications, certain Heating, Ventilation and Air Conditioning ("HVAC") applications, and for the storage, transportation and dispensing of certain gases. The Debtors' principal products include well water tanks, hot water expansion tanks, water treatment products, indirect-fired water heaters and returnable and non-returnable pressure-treated cylinders used primarily to store, transport and dispense liquid propane gas ("LPG") and refrigerant gases. *Affidavit of Larry T. Guillemette In Support of First Day Motions* at ¶ 6 (hereinafter "Guillemette Aff. at ¶ ____").

14. These bankruptcy cases do not affect the Debtors' foreign subsidiaries. Guillemette Aff. at ¶ 12.

15. The Debtors are a party to (i) a \$52.5 million senior first-priority secured credit facility arranged by Foothill Capital Corporation (now know as Wells Fargo Foothill, Inc.) (as amended, the "Foothill Facility"), and (ii) a \$35 million senior second-priority secured credit facility (as amended, the "Term C Loan Facility"). The Debtors also issued \$115 million of 10 5/8% Senior Subordinated Notes due December 2006 (the "1996 Notes") pursuant to a certain Note Indenture Agreement dated as of November 1, 2006 (the "1996 Indenture"). As of the Petition

Date, approximately \$97.8 million of the 1996 Notes remain outstanding. Guillemette Aff. at ¶ 37.

16. All of the Debtors' North American secured and unsecured long-term debt (approximately \$188 million in principal as of the Petition Date) matured in December 2006. As the maturity of this debt approached, the Debtors explored various avenues to recapitalize and/or restructure their debt, including the possible sale of all or portions of their business. Guillemette Aff. at ¶ 45.

17. The Debtors have purportedly reached an agreement in principle with the current holders of the 1996 Notes on a conversion of their position in the 1996 Notes into new equity in the Debtors through a plan of reorganization. Guillemette Aff. at ¶ 47.

18. The Debtors contend that they are concerned that a lengthy bankruptcy case will erode the Debtors' revenues and profitability, and are concerned about a potential loss of customers as a result of certain actions by their competitors. The Debtors have been informed that certain competitors are soliciting business from the Debtors' customers by suggesting that the Debtors' business may be liquidated, and therefore unable to: (i) continue supplying products; (ii) continue to provide customer service; and (iii) stand behind their product warranties. The Debtors contend that the negative solicitation

campaigns have had a negative impact on the Debtors' customer base that may intensify if the Debtors are not recapitalized quickly. The Debtors are also concerned that the general uncertainty surrounding the Debtors in a lengthy bankruptcy will cause customers to shift purchases from the Debtors to their competitors, further eroding the Debtors' revenues and profitability. Guillemette Aff. at ¶ 63.

19. News releases report that Larry T. Guillemette, Amtrol's chairman, president and chief executive officer, commented, "[f]or several years, Amtrol has been constrained by its highly leveraged capital structure. Quite simply, we have too much debt. . . ."

Post-Petition Financing

20. On December 19, 2006, the Debtors filed their *Emergency Motion For Interim and Final Orders (I) Authorizing Debtors To (A) Obtain Post-Petition Senior Secured Super-Priority Financing and (B) Use Cash Collateral of Pre-Petition Secured Lenders; (II) Authorizing the Immediate Payoff of the Pre-Petition Secured Loans, (III) Granting Adequate Protection To Pre-Petition Secured Lenders; and (IV) Scheduling Final Hearing* (the "Financing Motion"). Through the Financing Motion, the Debtors seek authority to obtain post-petition senior secured and super-priority financing (the "DIP Financing") up to the aggregate principal amount of \$115 million (with \$107,500,000 authorized

under the Interim DIP Order). Financing Motion at ¶ 12(a). If approved, the DIP Financing would refinance and replace the Foothill Facility and the Term C Loan Facility. Financing Motion at ¶ 11. The DIP Facilities would consist of (a) up to \$90 million senior secured term loan, and (b) a \$25 million senior secured revolving credit facility. Financing Motion at ¶ 18.

21. The Debtors' obligations under the DIP Facilities would be subject to a carve-out for professional fees and court costs in an aggregate amount of \$2.5 million. Financing Motion at ¶ 18.

22. On December 20, 2006, the Court entered the Interim Financing Order.

Facts Concerning National Grid

23. National Grid provided the Debtors with prepetition utility service and has continued to provide the Debtors with post-petition utility service.

24. The normal billing in a monthly cycle and follow-up procedures and practices for National Grid are as follows: Meters are read monthly at intervals of approximately 27 to 33 days. The meter reading date for each meter normally depends on its geographic location. The log date for all meters read on any particular day is corrected and processed, and every customer whose meter was read on that day normally receives its bill by first-class mail several days following the meter reading date.

Bills are due when rendered, but National Grid's tariffs require that each customer be afforded at least 20 days after rendition of the bill to make payment without being considered in default. Non-payment by a customer of the preceding month's bill is normally not discovered and acted upon until the billing for the current month is in the process of preparation.

25. After discovery of non-payment, the rules of the Rhode Island Public Utility Commission require that the normal customer receive at least fifteen days notice before National Grid denies further service by cutting a customer off. The number of unpaid service days in a situation where a meter is read and billed monthly to the time of disconnection is approximately 75 to 90 days. Therefore, under ideal circumstances, National Grid would be forced to incur significant post-petition debt before being able to disconnect service.

26. Subject to a reservation of the National Grid's rights to supplement its post-petition deposit request if additional accounts belonging to the Debtors are subsequently identified, National Grid's post-petition deposit requests are currently as follows:

<u>No. of Accounts</u>	<u>Deposit Request</u>
9	\$302,018 (two-month)

Discussion

A. THE DEBTORS' PROPOSED ADEQUATE ASSURANCE OF PAYMENT PROCEDURES VIOLATE THE EXPRESS PROVISIONS OF SECTION 366 AND SHOULD BE REJECTED BY THE COURT.

Sections 366(b) and (c) of the Bankruptcy Code, in pertinent part, provide:

(b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. . . .

(c) (1) (A) For purposes of this subsection, the term 'assurance of payment' means

- (i) a cash deposit;
- (ii) a letter of credit;
- (iii) a certificate of deposit;
- (iv) a surety bond;
- (v) a prepayment of utility consumption; or
- (vi) another form of security that is mutually agreed upon between the utility and the debtor or the trustee.

(B) For purposes of this subsection an administrative expense priority shall not constitute an assurance of payment,

(2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility;

(3) (A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of

payment under paragraph (2).

(B) In making a determination under this paragraph whether an assurance of payment is adequate, the court may not consider

- (i) the absence of security before the date of the filing of the petition;
- (ii) the payment by the debtor of charges for utility service in a timely manner before the date of the filing of the petition; or
- (iii) the availability of an administrative expense priority.

(4) Notwithstanding any other provision of law, with respect to a case subject to this subsection, a utility may recover or set off against a security deposit provided to the utility by the debtor before the date of the filing of the petition without notice or order of the court.

1. The Debtors' Attempt To Extend The 20 and 30-Day Provisions Of Section 366 Should Be Rejected.

As set forth above, Section 366(b) of the Bankruptcy Code establishes a procedure whereby a debtor is to provide a utility with adequate assurance of payment, in the form of a deposit or other security within the first 20 days of the bankruptcy proceeding. If the debtor fails to provide the utility with adequate assurance of payment that the utility believes is satisfactory within the first 30 days of the bankruptcy proceeding, Section 366(c)(2) expressly provides that the utility is entitled to alter, refuse or discontinue service to the debtor. Despite the foregoing, the Debtors have sought in the Utility Motion procedures that would extend the 20 and 30-day

periods of Sections 366(b) and (c).

Under the procedures sought by the Debtors in the Utility Motion, a utility that does not believe the Debtors' two-week deposit offer is sufficient, must file an Additional Assurance Appeal with the Court no later than 20 days after entry of a Final Order approving the Utility Motion that is in compliance with the procedures set forth in paragraph 11 of the Utility Motion.

Additionally, even if the Debtors and a utility come to an agreement concerning additional adequate assurance of future payment, the Debtors nevertheless may not provide such additional adequate assurance to a utility either (i) in the amount requested by such utility in its Adequate Assurance Appeal or (ii) in an amount agreed to by the Debtors and such Utility Company, without the consent of the DIP Lender, in its sole discretion. ^{fn1} Utility Motion at ¶ 12.

Additionally, if the Debtors and a utility that timely files an Adequate Assurance Appeal cannot agree to adequate assurance of future payment, the Debtors propose that a Determination Hearing would be held on either (i) the Debtors' next omnibus hearing date if the Adequate Assurance Appeal is filed on or before the date that is fifteen (15) days prior to such omnibus

¹ Section 366(c)(2) provides that the utility, not the DIP Lender, is the entity that is to decide whether the proposed adequate assurance of payment is satisfactory.

hearing, or (ii) the following omnibus hearing date if the Additional Assurance Appeal is filed thereafter. Utility Motion at ¶ 13. Hence, the Debtors are seeking to obtain an extension of the 20 and 30-day periods of Section 366 if a utility makes a request for adequate assurance in accordance the burdensome requirements of the Debtors' proposed procedures. There is no need for all of these procedures. The Debtors either need to provide National Grid with acceptable adequate assurance of payment within 30 days of the Petition Date or, as set forth in subsection 3 below, file a proper Motion seeking to modify the adequate assurance of payment requested by National Grid.

2. The Court Should Reject The Procedures That Attempt To Add Time Consuming And Burdensome Requirements That Are Not Found In Section 366.

In addition to seeking to avoid the time limitations established by Section 366, the Debtors also seek procedures designed to make the adequate assurance of payment process more time consuming and burdensome. For example, even though Section 366 now defines assurance of payment, it contains no provisions requiring utilities to make demands for adequate assurance within certain time periods nor does it establish requirements for the content of any such request. Despite the foregoing, the proposed procedures set forth in the Utility Motion require that utilities who are not satisfied with the Debtors' mere two week deposit

offer must file an Additional Assurance Appeal with the Court within twenty (20) days of entry of a Final Order that (i) sets forth the location for which utility services are provided, (ii) includes a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits or other pre-payments or assurances previously provided by the Debtors, (iii) describes in sufficient detail the reason(s) why the treatment afforded pursuant to the procedures set forth in the Utility Motion does not constitute satisfactory adequate assurance of payment, and (iv) includes a proposal for what would constitute adequate assurance from the Debtors, along with an explanation of why such proposal is reasonable. Utility Motion at ¶ 11.

Information regarding prepetition payment history, which the utilities would be required to provide to the Debtors as part of an Adequate Assurance Request under the proposed procedures in the Utility Motion are statutorily irrelevant pursuant to Sections 366(c)(3)(B). Section 366(c)(3)(B) expressly provides:

- (B) In making a determination under this paragraph whether an assurance of payment is adequate, the court may not consider
 - (i) the absence of security before the date of the filing of the petition;
 - (ii) the payment by the debtor of charges for utility service in a timely manner before the date of the filing of the petition; or
 - (iii) the availability of an administrative expense priority.

Moreover, the Debtors presumably have access to the same account information as the utilities. The Debtors are merely seeking to impose these requirements and procedures upon the utilities to dissuade the utilities from making requests for adequate assurance of payment pursuant to Section 366 of the Bankruptcy Code. Simply put, such burdensome procedures are not contained in Section 366 and should not be granted by this Court.

3. The Court Should Reject The Debtors' Proposed Adequate Assurance Procedures That Contravene The Express Provisions of Section 366 Which Requires a Debtor To Provide A Utility With Adequate Assurance As Demanded By the Utility, And If The Debtor Believes That The Deposit Should Be Modified, The Debtor Must File A Motion To Modify The Adequate Assurance Deposit Paid To The Utility.

Section 366(b) expressly provides that a debtor must provide a utility with adequate assurance of payment that the utility believes is satisfactory within the first 30 days of the bankruptcy proceeding. Section 366(c)(3)(a)(3)(A) further provides:

On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).

Accordingly, the proper procedure under Section 366 is for a debtor to provide a utility with adequate assurance of payment requested by the utility within 30 days of the bankruptcy proceeding, and if the debtor wants a modification of the amount

of adequate assurance of payment that it has provided to the utility, then the debtor must file a motion to modify the deposit it has paid to the utility. Simply put, a debtor must first pay the requested deposit amount, and then file a motion to modify the paid deposit. See *In re Lucre, Inc.*, 333 B.R. 151 (Bankr. W.D. Mich. 2005) (holding that a debtor has no recourse to modify the adequate assurance payment that a utility is demanding until the debtor actually accepts and pays the adequate assurance that the utility proposes); *In re Stagecoach Enterprises, Inc.*, 1 B.R. 732 (Bankr. M.D. Fla. 1979) (holding that under Section 366, the utility itself has the initial right to set the amount of the deposit or other adequate assurance that it requires for the payment of utility service, and that the debtor can apply to the court for a modification of whatever amount the utility deems necessary to provide adequate assurance of payment). Additionally, the debtor has the burden of proof as to whether its requested adequate assurance modification is justified. *Id.* at 734 (holding that the debtor, as the petitioning party at a Section 366 hearing, bears the burden of proof).

B. THE COURT SHOULD ORDER THE DEBTORS TO PROVIDE THE ADEQUATE ASSURANCE OF PAYMENT REQUESTED HEREIN PURSUANT TO SECTION 366 OF THE BANKRUPTCY CODE.

Section 366(c) was amended to overturn decisions such as Virginia Electric and Power Company v. Caldor, Inc., 117 F.3d 646 (2d Cir. 1997), that held that an administrative expense, without

more, could constitute adequate assurance of payment in certain cases. Section 366(c)(1)(A) specifically defines the forms that assurance of payment may take as:

- (i) a cash deposit;
- (ii) a letter of credit;
- (iii) a certificate of deposit;
- (iv) a surety bond;
- (v) a prepayment of utility consumption; or
- (vi) another form of security that is mutually agreed upon between the utility and the debtor or the trustee.

A determination of adequate assurance is within the court's discretion, and is made on a case-by-case basis, subject to the new requirements of Section 366(c). See In re Utica Floor Maintenance, Inc., 25 B.R. 1010, 1016 (Bankr. N.D.N.Y. 1982); In re Cunha, 1 B.R. 330, 332-33 (Bankr. E.D. Va. 1979). Section 366 of the Bankruptcy Code was enacted to balance a debtor's need for utility services from a provider that holds a monopoly on such services, with the need of the utility to ensure for itself and its rate payers that it receives payment for providing these essential services. See In re Hanratty, 907 F.2d 1418, 1424 (3d Cir. 1990). The deposit or other security "should bear a reasonable relationship to expected or anticipated utility consumption by a debtor." In re Coastal Dry Dock & Repair Corp., 62 B.R. 879, 883 (Bankr. E.D.N.Y. 1986). In making such a determination, it is appropriate for the Court to consider "the

length of time necessary for the utility to effect termination once one billing cycle is missed." In re Begley, 760 F.2d 46, 49 (3d Cir. 1985). Based on the Debtors' anticipated utility consumption, the minimum period of time the Debtors could receive service from National Grid before termination of service for non-payment of bills is approximately two (2) months. Accordingly, the two-month security deposit requested by National Grid is reasonable. See In re Stagecoach, 1 B.R. 732, 735-36 (Bankr. M.D. Fla. 1979) (two month deposit is appropriate where the debtor could receive 60 days of service before termination of services because of the utilities' billing cycle.); see also In the Matter of Robmac, Inc., 8 B.R. 1, 3-4 (Bankr. N.D. Ga. 1979).

As set forth above, National Grid's deposit request is based on: (1) its billing exposure created by its state law tariffs and/or regulations; and (2) amounts that its state regulatory commission, which is a neutral third-party entity, permits it to request. Although National Grid recognizes that this Court is not bound by the regulations/tariffs of the applicable state governmental entity that establishes the deposit amounts that National Grid can request from its customers, it is extremely relevant information of a determination made by an independent entity on the appropriate amount of security that should be paid to National Grid.

Additionally, National Grid's deposit request is based upon:

(1) the Debtors' admitted highly leveraged capital structure; (2) the excessive control that the DIP Lender has over the Debtors' operations (It is simply unprecedented to see a DIP Lender given veto power over the adequate assurance of payment procedures in the Section 366 pleadings.); and (3) The Debtors willingness to provide payments and security to other creditors other than its utilities. Specifically, the Debtors have sought authority to pay the following amounts: (A) \$4.8 million for the prepetition claims of purported "critical vendors" that remarkably do not include utility providers; (B) Up to \$1 million for the prepetition claims of shippers, warehousemen and other purported lien claimants; (C) Up to \$875,000 for foreign vendors. Moreover, in addition to their \$189,000 retainer, the Debtors have sought to obtain a super-priority carve-out for their and other professionals' post-petition fees in the amount of up to \$2.5 million, which is nearly 8 times the amount of the Debtors' total average monthly utility expenses to all of its utilities.

In contrast, the Debtors do not provide an objective basis for their adequate assurance offers. The Debtors merely claim that the proposed procedures set forth in the Utility Motion would provide an orderly process for providing adequate assurance of payment to utility companies without risking irreparable harm to the estates. Utility Motion at ¶ 22. Additionally, in support of the relief sought in the Utility Motion, the Debtors

claim that prior to the Petition Date, they were current in the payment of invoices received from utility companies. Utility Motion at ¶ 9. Information regarding prepetition payment history is statutorily irrelevant pursuant to Sections 366(c)(3)(B).

WHEREFORE, National Grid respectfully requests that this Court enter an order:

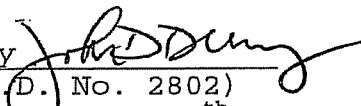
(I) Vacating the Bridge Utility Order;

(II) Awarding National Grid the post-petition adequate assurances of payment it has requested from the Debtors herein; and

(III) Awarding such other and further relief as the Court deems just and appropriate.

Dated: January 8, 2007

STEVENS & LEE, P.C.

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-and-

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Phone: (804) 749-8861

Counsel for National Grid

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
AMTROL HOLDINGS, INC., <i>et al.</i> ¹	:	Case No. 06-11446 (KG)
Debtors.	:	(Jointly Administered)
	:	Related Docket Nos.: 23 & 51

**FINAL ORDER (I) PROHIBITING UTILITY COMPANIES
FROM DISCONTINUING, ALTERING OR REFUSING SERVICE,
(II) ESTABLISHING PROCEDURES FOR PROVIDING DEPOSITS TO REQUESTING
UTILITIES, (III) DEEMING UTILITY COMPANIES TO HAVE ADEQUATE
ASSURANCE OF PAYMENT, AND (IV) ESTABLISHING PROCEDURES FOR
RESOLVING REQUESTS FOR ADDITIONAL ASSURANCE PURSUANT TO 11 U.S.C.
§§ 105(A) & 366**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession for entry of an order pursuant to sections 105(a) and 366 of the Bankruptcy Code: (i) prohibiting the Utility Companies from discontinuing, altering or refusing service to the Debtors, (ii) establishing procedures whereby the Debtors will provide Deposits to Requesting Utilities, (iii) deeming the Utility Companies to have received adequate assurance of payment, and (iv) establishing procedures for determining requests for additional assurances of payment; and due and proper notice of the Motion having been given; and it appearing that no other or further notice is required; and upon consideration of the Motion and all pleadings related thereto, including the Guillemette Affidavit; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core

¹ Additional debtors include all of Amtrol Holdings, Inc.’s wholly-owned domestic subsidiaries: Amtrol Inc.; Water Soft Inc.; and Amtrol International Investments Inc.

² All capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and creditors; and after due deliberation thereon, and good and sufficient cause appearing therefore; it is hereby

ORDERED, that the Motion is granted; and it is further

ORDERED, that absent a post-petition default in payment for post-petition services or any further order of the Court each Utility Company is hereby prohibited from (i) discontinuing, altering, or refusing service to the Debtors on account of any unpaid pre-petition charges or otherwise, or (ii) requiring the payment of a security deposit or receipt of any other security from the Debtors in connection with any unpaid pre-petition charges except as set forth herein and in the Motion; and it is further

ORDERED, that the procedures for determining requests for additional assurance of payment as described in the Motion are approved as follows:

- a) Other than as set forth herein, each Utility Company is prohibited from discontinuing, altering, refusing service to, or discriminating against the Debtors until, after a Determination Hearing, this Court issues a final order authorizing such action;
- b) Other than pursuant to the procedures set forth herein and in the Motion, the Utility Companies are prohibited from requiring additional adequate assurance of payment from the Debtors whether in connection with any unpaid pre-petition charges or otherwise;
- c) Within five (5) days after the entry of this Final Order granting the relief requested herein, the Debtors shall serve this Final Order on the Utility Companies;
- d) Utility Companies shall have twenty (20) days from the date of entry of this Final Order approving the procedures described herein to send an Additional Payment Request in the manner set forth in the Motion;

- e) The Debtors shall have ten (10) days to comply with each such Additional Payment Request by providing Requesting Utilities with a Deposit in an amount equal to the average cost to the Debtors of two weeks of service from such Requesting Utility over the twelve (12) months preceding the Petition Date provided that such Requesting Utility does not already hold a deposit equal to or greater than two (2) weeks of utility services, and provided further that such utility is not currently paid in advance for its services.³
- f) Utility Companies that do not file an Additional Payment Request by the Additional Payment Request Deadline shall be deemed to have received satisfactory adequate assurance of payment in accordance with section 366(c)(1)(A)(vi);⁴
- g) If a Utility Company does not believe that it has received satisfactory adequate assurance of payment, regardless of whether it has received a Deposit, pursuant to the procedures set forth herein and in the Motion, it may file an Additional Assurance Appeal pursuant to the procedures set forth herein and in the Motion. Specifically, the Additional Assurance Appeal may be filed with this Court at any time after a Utility Company becomes an Advance Payment Utility Company or Consenting Utility Company and must (i) be in writing, (ii) set forth the location for which utility services are provided, (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits or other pre-payments or assurances previously provided by the Debtors, (iv) describe in sufficient detail the reason(s) why the treatment afforded pursuant to the procedures set forth herein does not constitute satisfactory adequate assurance of payment, and (v) include a proposal for what would constitute adequate assurance from the Debtors, along with an explanation of why such proposal is reasonable;
- h) The Debtors shall be entitled to comply with or compromise, Additional Assurance Appeals in their sole discretion and without further notice or order of the Court; provided, however, that the Debtors may not provide additional adequate assurance to a Utility Company either (i) in the amount requested by such Utility Company in its Additional Assurance Appeal or (ii) in an amount agreed to by the Debtors and such Utility Company, without the consent of the DIP Lender, in its sole discretion;
- i) Where a Utility Company filed an Additional Assurance Appeal and the Debtors are unable to reach a compromise, a hearing to determine whether additional assurance is necessary (a "**Determination Hearing**") will be held on either (i) the

³ In the event that a Utility Company sends the Debtors an Additional Payment Request prior to the entry of this Final Order approving the procedures described herein, the Debtors shall have until the entry of this Final Order to comply with such Additional Payment Request.

⁴ For those Utility Companies that are subsequently added to Exhibit C, the Debtors shall serve a copy of the Order on such Utility Companies, along with an amended Exhibit C, and such subsequently added entities shall have twenty (20) days from service of the Order to make an Additional Payment Request.

Debtor's next omnibus hearing date if the Additional Assurance Appeal is filed on or before the date that is fifteen (15) days prior to such omnibus hearing or (ii) the following omnibus hearing date if the Additional Assurance Appeal is filed thereafter;

- j) Any Deposit or assurance of payment provided by the Debtors to a Requesting Utility will, to the extent not used by the Utility Company to satisfy a post-petition default, be returned to the Debtors within thirty (30) days after the earlier of: (i) the consummation of a sale of substantially all of the Debtors assets pursuant to section 363 of the Bankruptcy Code; or (ii) the effective date of a plan of reorganization or liquidation in these Chapter 11 cases without further order of the Court, or otherwise as ordered by the Court.

ORDERED, that the Debtors are authorized, in their sole discretion, to amend Exhibit C to the Motion to add or delete any Utility Company, and this Order shall apply to any such Utility Company that is subsequently added to Exhibit C to the Motion; and it is further

ORDERED, that pursuant to section 366(c)(1)(A) of the Bankruptcy Code, to secure payment of Additional Payment Requests, the Debtors will maintain a utility escrow account (the "Utility Escrow") for the exclusive benefit of the Utility Companies in the amount of \$150,000.00, said amount representing approximately two weeks of average utility payables; and it is further

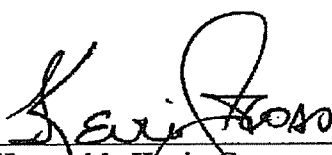
ORDERED, that, except as otherwise agreed to by Debtors pursuant to the procedures set forth in this Order, payment to a Utility Company from the Utility Escrow pursuant to section 366(c)(1)(A) shall not exceed the charges for two weeks of average utility payables from such requesting Utility Company, said payment reducing the Utility Escrow proportionally; and it is further

ORDERED, that notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved debtor-in-possession financing facility, or budget in connection therewith, or any order regarding the use of cash collateral; and it is further

ORDERED, that the Debtors are hereby authorized and empowered to take all actions necessary to implement the relief granted in this Order; and it is further

ORDERED, that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: January 11, 2007
Wilmington, Delaware



The Honorable Kevin Cross
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Amtrol Holdings, Inc., et al.,
Debtor(s). Bankruptcy #06-11446 (KG)

Wilmington, DE
January 11, 2007
2:00 p.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For The Debtor:

William Chipman, Esq.
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<p>1 For the Ad Hoc Committee: 2 Of Senior Bondholders 3 4 5 6 7 For Prepetition Second: 8 Lenders 9 10 11 For Barclays Capital: 12 13 14 15 16 For National Grid: 17 18 For The United States: 19 Trustee 20 21 22 Audio Operator: 23 24 25</p>	<p>Kelley A. Cornish, Esq. Paul, Weiss, Raskind, Wharton & Garrison, LLP 1285 Avenue of the Americas New York, NY 10019 Joel A. Waite, Esq. Young Conaway Stargatt & Taylor, LLP 1000 West Street, 17th Floor Wilmington, DE 19899 Derek C. Abbott, Esq. Morris, Nichols, Arsht & Tunnel, LLP Chase Manhattan Center 1201 North Market Street Wilmington, DE 19899 Christopher Winter, Esq. Duane Morris, LLP 1100 North Market Street Wilmington, DE 19801 Mitchell A. Seider, Esq. Latham & Watkins, LLP 885 Third Avenue - Suite 1000 New York, NY 10022 Russell Johnson, III, Esq. Law Offices of Russell Johnson 2258 Wheatlands Drive Manakin-Sabot, VA 23103 Mark Kenney, Esq. Office of the United States Trustee 844 King St. - Ste. 2207 Lockbox 35 Wilmington, DE 19801 Jason Smith</p>
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1 THE COURT: Yes.

2 MR. CHIPMAN: They could just shut us off after 31
3 days. We're here today within 30 days to resolve this matter.
4 And Your Honor, it's been resolved, we argue, consensually with
5 all the utilities except for National Grid. And Your Honor, we
6 believe that the two weeks plus the fact that Your Honor's
7 entered the final D-I-P Order providing for \$115 million of D-
8 I-P financing, the Debtors now have about \$2 million in the
9 bank today -- cash -- and availability under the D-I-P of 12 to
10 13 million -- provide ample adequate assurance of payment going
11 forward.

12 THE COURT: I am satisfied with the process that's
13 been followed. I think it's an issue of form over substance.
14 And we're here now whether it's -- I do think it is still the
15 Debtors' burden to establish the adequate assurance that is
16 being provided. I don't think that's shifted. But as far as
17 the notice and the requirement to come to a hearing prepared to
18 put on testimony, I think that we should proceed with the
19 testimony now.

20 MR. CHIPMAN: Thank you, Your Honor. If I may
21 proceed?

22 THE COURT: Yes.

23 MR. CHIPMAN: Your Honor, Mr. DePaula is in Court
24 and I'll offer a short proffer of his testimony and offer him
25 up for cross examination.

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1 THE CLERK: How do you spell his last name?

2 MR. CHIPMAN: I'm sorry. It's DePaula. D-E,
3 capital P-A-U-L-A. Mr. DePaula's the CFO of the company, Your
4 Honor, and if called to testify would testify as to the
5 following facts.

6 In the operation of their manufacturing distribution and
7 office facilities, the Debtors incur utility expenses in the
8 ordinary course of business for, among other things, water,
9 sewer, water, sewer services, electricity, gas, local telephone
10 service and waste disposal. On an annual basis, the Debtors
11 spend approximately 3.8 million for various utility services,
12 with an aggregate monthly cost of about \$320,000.
13 Approximately 27 utility companies in the United States provide
14 these utility services to the Debtors.

15 Prior to the petition date, the Debtors were current in
16 the payment of the invoices they received from utility
17 companies. The Debtors currently have approximately \$2 million
18 in cash on hand and have availability under the D-I-P loan now
19 that the final D-I-P Order's been approved of approximately \$12
20 to \$13 million of working capital. The D-I-P financing will
21 provide enough funding to pay all utility bills and in fact all
22 administrative expenses in these cases incurred by the Debtors
23 during these Chapter 11 cases in full and on time.

24 Mr. DePaula would further testify that if utility
25 companies are permitted to terminate utility services on the

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1 31st day after the petition date, a substantial disruption to
2 the Debtors' operations will occur. And the Debtors'
3 businesses will be irreparably harmed. To avert a potential
4 disaster, the Debtors would then be forced to pay whatever
5 amounts are demanded by the utility companies to avoid the
6 cessation of essential utility services and ultimately the
7 demise of their businesses.

8 The Debtors submit that the procedures set forth in the
9 motion provide for an orderly process for providing adequate
10 assurance of payment to the utility companies without risking
11 irreparable harm to the Estates. Without the procedures set
12 forth in the motion, the Debtors could be forced to address
13 numerous requests by the utility companies in a haphazard
14 manner at a critical period while the Debtors are trying to
15 reorganize their businesses.

16 The Debtors could be forced to capitulate -- sorry -- to
17 almost any demands made by their many utility companies, or
18 face the discontinuation of utility service to their
19 manufacturing facilities and a potential shutdown of their
20 businesses.

21 The orderly process contemplated by the procedures set
22 forth in the motion will avert such a potentially disastrous
23 outcome, enabling the Debtors to make a smooth transition into
24 Chapter 11 while ensuring a fair process for providing adequate
25 assurance to the utility companies to the extent required.

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1 Your Honor, with that, that would conclude Mr. DePaula's
2 testimony in regard to this motion on adequate assurance.

3 THE COURT: And he's available for cross
4 examination.

5 MR. CHIPMAN: He is available for cross examination,
6 Your Honor.

7 THE COURT: Yes, Mr. Johnson?

8 MR. JOHNSON: Your Honor, I have some objections to
9 the proffer, so I'm trying to figure out the best way to
10 proceed with that. I'll identify just a couple that I wrote
11 down as it was being presented and we can determine how to go
12 from there.

13 THE COURT: Okay.

14 MR. JOHNSON: Under the new statute, under 366,
15 whether or not they were current on payments is no longer
16 relevant. It's in the statute. It says it's not relevant so
17 I'd object to that as not being relevant testimony.

18 THE COURT: Right.

19 MR. JOHNSON: I'm not even sure it's true, actually.
20 But it's not relevant, so I'd object to that. Your Honor, I
21 also object to the testimony about availability and cash on
22 hand and things and testimony related to ability to pay their
23 bills.

24 Once again, the statute -- Section 366(c)3(a)iii, which is
25 what we're under here on this -- I guess transformer -- or

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1 transformation of the utility motion to a modification motion
2 under this section, it says the availability of an
3 administrative expense priority and saying you can pay your
4 post-petition bills, which is what I thought I heard him say
5 several times, sounds like the availability of administrative
6 expense priority. So to that extent, I would object.

7 And then lastly, I -- there was a lot of fluff, I guess,
8 in the proffer. It was more than just a factual proffer -- lot
9 of characterizations and I would object to that. There was
10 quite a few. I mean, I don't necessarily want to have to have
11 their CFO go through and spend all afternoon testifying here
12 today.

13 And I'd like to offer a proffer up of my witness as well,
14 but I do have some objections to some of the fluff that was in
15 there about the -- for example, the threat of turnoff in the
16 31st day. We're here today -- we're not talking about threat
17 of a turnoff. We're not talking about an unreasonable demand.
18 National Grid's demand is a two-month deposit after tariffs and
19 there's no other utility here. So I think some of that stuff's
20 not relevant and probably could have been excised from the
21 proffer.

22 THE COURT: Mr. Chipman?

23 MR. CHIPMAN: Your Honor, may I respond?

24 THE COURT: Yes.

25 MR. CHIPMAN: Briefly? Your Honor, we're okay with

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1 the first point. I don't think it's relevant to a
2 determination -- what -- I agree that what happened pre-
3 petition is irrelevant.

4 Your Honor, with respect to the second point, we're not
5 giving them an administrative claim here. What we're trying to
6 establish for the Court is we have plenty of money to pay these
7 during the course of the case, which isn't precluded in the
8 statute. We're trying to pay them, not give them
9 administrative claim.

10 THE COURT: Right.

11 MR. CHIPMAN: The third point, we'll agree, that all
12 the fluff can come out.

13 THE COURT: Okay.

14 MR. CHIPMAN: And --

15 THE COURT: I would say it's a hybrid proffer of
16 facts and oral -- and legal argument. And I agree and I think,
17 does that help Mr. Johnson?

18 MR. JOHNSON: That's fine.

19 THE COURT: Okay. And I guess, Mr. Johnson, the
20 witness is still available to you for cross examination.

21 MR. JOHNSON: No, Your Honor, that's fine.

22 THE COURT: Okay.

23 MR. JOHNSON: I'd like to put my witness on unless
24 you have another witness.

25 MR. CHIPMAN: No, Your Honor, that's --

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1 THE COURT: Anyone else?

2 MR. CHIPMAN: -- fine. I'll -- sorry.

3 Your Honor, the only other evidence I have to offer is
4 basically orders that have been entered -- and I have copies
5 for Counsel -- in this district approving similar procedures.
6 And I didn't know when Your Honor -- I think I should offer
7 those up before I turn the podium over to Counsel for the
8 utilities.

9 THE COURT: I --

10 MR. JOHNSON: I object on relevancy. Obviously
11 these are case by case plan specific.

12 THE COURT: I would say let's reserve those for --

13 MR. CHIPMAN: Argument?

14 THE COURT: -- whatever followup argument you're
15 going to have.

16 MR. CHIPMAN: Your Honor, I'll reserve those for
17 argument, then.

18 THE COURT: Okay.

19 MR. CHIPMAN: Thank you.

20 THE COURT: Thank you. Your -- well, not your
21 witness -- I'm sorry, your turn, Mr. Johnson.

22 MR. JOHNSON: Your Honor, my proffer is William
23 Grossman from National Grid. Mr. Grossman is an employee of
24 National Grid and is here and would testify if called today,
25 Your Honor, that National Grid provided service pre-petition --

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1 continues to provide gas and electric -- New England Gas
2 company is the -- providing the gas service. Narragansett
3 Electric Company provides the electric service. That they're
4 providing post-petition service, that under National Grid's
5 billing cycle regulations and tariffs, National Grid bills the
6 Debtor as follows.

7 The meters are read every 27 to 33 days, approximately one
8 month. Bills are due upon receipt but the customer's afforded
9 at least 20 days after rendition of the bill to make payment
10 without being considered in default. Non-payment by a customer
11 is not acted on upon until the next bill is issued the
12 following month. And at that time, if the prior month's bill
13 has not been paid, a default notice giving the Debtor 10 days
14 to cure is issued.

15 And if you add up all this time, Your Honor, the testimony
16 from Mr. Grossman would be that the Debtor -- if they failed to
17 pay an invoice, could receive up to 70 days of utility service
18 -- gas or electric -- before National Grid could begin to
19 terminate service for the post-petition non-payment. That
20 represents their exposure.

21 Mr. Grossman would testify that this billing cycle is
22 established by the applicable tariffs and regulations of the
23 Rhode Island Public Utility Commission. And that National Grid
24 is obligated to comply with those regulations.

25 The testimony would also be, Your Honor, that National

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1 Grid has requested a deposit in the total amount -- it's a two-
2 month deposit of \$302,018, that this is a deposit that the
3 Rhode Island Public Utility Commission permits National Grid to
4 request for its customers. That this deposit is less than the
5 70 days of exposure testified to, but this is the deposit that
6 it is requested that it feels that it's obligated to request
7 pursuant to its tariffs and bound by.

8 Your Honor, the -- Mr. Grossman would also testify that he
9 is familiar with the Debtor's offer of adequate assurance and
10 that is not satisfactory -- that it doesn't even cover one-half
11 of one month's billing cycle and that if that was a relevant
12 standard that it would be rejected.

13 THE COURT: Thank you.

14 MR. JOHNSON: That's all.

15 THE COURT: Any cross examination from the Debtors -
16 - or anyone for that matter? Any interested party?

17 MR. CHIPMAN: May I have a moment, Your Honor?

18 THE COURT: Certainly.

19 MR. CHIPMAN: No, Your Honor.

20 THE COURT: Anything further, Mr. Johnson? Any
21 other witness?

22 MR. JOHNSON: No other witness.

23 THE COURT: Okay. Then I'll hear follow-up
24 argument.

25 MR. CHIPMAN: Thank you, Your Honor. Your Honor,

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1 carveout. Doesn't require anything of the like.

2 Your Honor, a lot of what was brought up by Counsel for
3 National Grid was pre-petition issues. It took two years --
4 the company's trying to sell itself for two years and
5 restructure its debt. We're now in a bankruptcy case. The
6 facts are different. We have an agreement in principle with
7 our noteholders for a quick plan. We've closed on \$115 million
8 D-I-P with plenty of availability, plenty of cash in the bank
9 and the company's operating in a positive cash flow situation.

10 Your Honor, just as the prior arrangement between National
11 Grid and the Debtors is irrelevant under the new -- under new
12 Section 366, so should the pre-petition issues relating to the
13 Debtors. You should look at the Debtors today, Your Honor,
14 with the D-I-P loan in place and the availability and make your
15 determination.

16 Your Honor, with the D-I-P lenders, the issue about the D-
17 I-P lender having control -- it's in every case whether it's
18 stated in the order or not, we can't pay things unless we run
19 it by the D-I-P lender. So I don't think that that's a huge
20 issue. Your Honor, I think that's all the issues I have to
21 address at this point.

22 THE COURT: Thank you.

23 MR. CHIPMAN: Thank you.

24 THE COURT: Well, I'm prepared to grant the motion
25 here. Under the facts and circumstances of this case, I think

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1 we have a particularly strong D-I-P loan. We have a Debtor
2 that is operating on a cash flow positive basis. I think it's
3 going to be a -- we hope that it's going to be a short and
4 sweet bankruptcy case before we get to a plan confirmation.
5 Under those circumstances, and the specific circumstances of
6 this case, I believe that the two weeks is adequate assurance
7 for the utility.

8 I might note that I make myself available readily and if
9 there is a problem in payment to the utility, I'm certainly
10 here to consider emergency relief if it's appropriate or
11 necessary. And to revisit this issue. But on a going-forward
12 basis, the Court is satisfied with the two weeks of deposit.
13 Thank you, Mr. Johnson.

14 MR. CHIPMAN: Thank you, Your Honor, and if I may
15 approach, I do have a clean and a blackline version of the
16 order. I can walk you through, Your Honor, some changes.

17 THE COURT: Thank you.

18 MR. CHIPMAN: Thank you. Your Honor, the United
19 States Trustee had requested that these procedures can remain
20 in place so long as the Debtors are not in any post-petition
21 payment default. And at the top of page 2 we have made that
22 addition to the order. In other words, the Debtor's going to
23 pay their utilities --

24 THE COURT: That's right.

25 MR. CHIPMAN: -- in the ordinary course.

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1 THE COURT: The concern that I raised.

2 MR. CHIPMAN: Right. Your Honor, on page 4, we've
3 added the concept of the utility escrow -- the \$150,000. And
4 how that will be doled out to the utility companies -- those
5 are the two ordered paragraphs. And I believe those are the
6 only two changes from the Form of Order that was submitted with
7 the motion to the order that we're asking Your Honor to enter
8 today.

9 THE COURT: Thank you. All right.

10 MR. CHIPMAN: And that's it.

11 THE COURT: I'm prepared to enter -- I will enter
12 the order.

13 MR. CHIPMAN: Thank you, Your Honor. And I believe,
14 unless anyone has anything else, that takes care of today's
15 agenda.

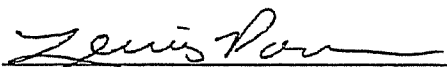
16 THE COURT: I thank everyone and we'll stand in
17 recess. Thank you very much and good day.

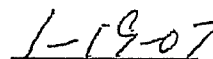
18 MR. CHIPMAN: Thank you, Your Honor.

19 (Court adjourned)
20

21 CERTIFICATION

22 I certify that the foregoing is a correct transcript from the
23 electronic sound recording of the proceedings in the above-
entitled matter.

24 
25 Signature of Transcriber


Date

Writer's Cramp, Inc.

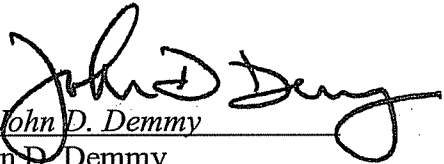
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CERTIFICATE OF SERVICE

John D. Demmy hereby certifies that on this 14th day of May, 2007, the foregoing *APPENDIX IN SUPPORT OF OPENING BRIEF* was served via hand delivery on counsel of record, identified below:

Denise S. Kraft, Esq.
Edwards Angell Palmer & Dodge LLP
919 North Market Street, 15th Floor
Wilmington, DE 19801


/s/ John D. Demmy
John D. Demmy